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Docket Entries

(A)

64 Cr 715

THE UNITED STATES

VS.

SALVATORE SHILLITANI

Order to Show Cause why the witness should not be
punished for contempt of Court.

DATE

PROCEEDINGS

- 8- 5-64 Filed Affidavit of Audred M. Lawler, Jr., Esq.,
Ass't U.S. Atty, dated 8/5/64, and Order to
Show Cause, why Salvatore Shillitani should
not be adjudged and held in contempt of this
Court. Order to Show cause ret. 8/10/64 at
10:00 o'clock in Room 506, this Court. Endorse-
ment thereon: "Issued at 12:45 A.M. August
5, 1964."
MacMahon, D.J.
- 8-10-64 Filed Judgment—Two (2) Years, or until further
order of this Court, should Salvatore Shillitani
answer before the grand jury the questions
which appear on the record as he was ordered
to answer and should defendant answer those
questions before the expiration of said sentence
or the discharge of said grand jury, whichever
may first occur, the further order of this Court
may be made terminating the sentence of im-
prisonment. Defendant Remanded. The defen-
dant's oral motion for bail pending appeal is
denied.
MacMahon, D.J.

Docket Entries

(B)

DATE

PROCEEDINGS

- 8-10-64 Issued commitment and copies.
- 8-10-64 Filed Notice of Appeal, dated 8/10/64, to the U.S.C.A., from the judgment of 8/10/64. "Copy mailed to the Warden, Fed. House of Detention, 427 West Street, N.Y.C.—8/10/64" \$5.00
- 8-17-64 Filed defendant's election against service of sentence. Election dated 8-12-64.

Government's Exhibit 3A In Evidence

July 1, 1964

Re: Salvatore Shillitani

Messrs. Tendy, Lawler

Sept. Spec.

Grand Jury in Court Session
before Judge Wyatt, USDJ

Appearances:

WILLIAM L. TENDY,
Assistant United States Attorney

ANDREW M. LAWLER, JR.
Assistant United States Attorney

SALVATORE SHILLITANI
Witness

Grand Jury Reporter:
E. J. Cordes

Judge Wyatt: Mr. Foreman, members of the Grand Jury, good morning.

Mr. Tendy: Your Honor, this is an application by the Government pursuant to Section 1406 of Title 18. I'd like the record to reflect, however, that present in the courtroom, in addition to the Grand Jury, is a Grand Jury stenographer and myself and Mr. Andrew Lawler, an Assistant United States Attorney in the Southern District of New York, and an individual named Salvatore Shillitani. I'd like to—

Judge Wyatt: May the record show the name of the Grand Jury stenographer.

Mr. Tendy: Yes.

G. J. Stenographer: Emily J. Cordes.

Government's Exhibit 3A In Evidence

Mr. Tendy: I'd like to hand up to the Court a copy of the Government's application. It consists of an affidavit executed by the United States Attorney for the Southern District of New York, Robert M. Morgenthau. In substance it points out to the Court that on February 22—I beg your pardon, February 12—of 1964, April 22 of 1964, and May 6 of 1964 Salvatore Shillitani appeared before the Grand Jury in this district and was asked certain questions, which questions he declined to answer. Pursuant to the authority or to the provisions of Title 18, Section 1406 of the—

Judge Wyatt: Did he state why he refused to answer?

Mr. Tendy: Yes, he indicated generally that he refused to answer on the grounds that his answers might tend to incriminate him. We have obtained, and there is attached to the Government's application, the approval of the Attorney General of the United States. Your Honor will notice the approval in a letter from Mr. Kennedy, which is dated June 1st of 1964. Also attached to the Government's application are copies of the Grand Jury proceedings on the dates that Shillitani appeared before the Grand Jury. The Government now respectfully requests that Shillitani be directed to answer certain questions which were asked of him on the three dates previously mentioned and which he declined to answer. I will, if Your Honor wishes me to, pinpoint for the Court those specific questions which were asked on those three dates.

Judge Wyatt: Let's wait just a few minutes. Give me a chance to look at these papers to satisfy myself that the immunity of this witness, Mr. Shillitani, is in order.

Mr. Tendy: Very well, sir.

Judge Wyatt: Just give me a few minutes.

(Judge Wyatt looks at papers).

Judge Wyatt: You are Mr. Shillitani?

Witness: Yes sir.

Government's Exhibit 3A In Evidence

Judge Wyatt: Mr. Shillitani, I want first to explain to you what this proceeding is about. Under the laws of the United States, specifically Section 1406 of Title 18,—

Witness: (Stands up) Sorry.

Judge Wyatt: That's all right.—the United States Attorney, with the approval of the Attorney General, may, on certain representations, make application to the Court, as is now being made, for instructions to a witness to testify before this Grand Jury and produce documents, if material. Now, ordinarily, questions need not be answered which might tend to incriminate, and you have heard it represented to me that you have declined to answer certain questions on that ground; but when the United States Attorney proceeds under this section to which I've referred and the Court issues instructions to answer, then no prosecution can ever be commenced against you for any matters or things referred to in any answers you might give. To put it shortly, you are, if this procedure is followed, you are given immunity from prosecution and, therefore, may no longer rely on the excuse that answers might incriminate you, because they cannot, therefore, incriminate you because you are granted immunity. Now, from the affidavit of the United States Attorney, Mr. Morgenthau, sworn to June 30, 1964, I find that the Grand Jury now here is conducting a proceeding which relates to investigations involving possible violations of the Federal Narcotics Laws, which are referred to in Section 1406 of Title 18. Now, I find further that the United States Attorney, Mr. Morgenthau, in his affidavit states that, in his judgment, it is necessary to the public interest of the United States that your testimony be taken before this Grand Jury and that your testimony concerning the matters under inquiry by this Grand Jury and your responses are necessary to the public interest of the United States and necessary and material to this investigation. I find further that, from an original letter of Honorable Robert F. Kennedy, the Attorney General of the

Government's Exhibit 3A In Evidence

United States, dated June 1, 1964, the Attorney General has approved the making of this application to the Court. I, therefore, find that the United States Attorney, with the approval of the Attorney General, has complied with the provisions of Section 1406 of Title 18 and is, therefore, entitled to have the Court instruct you to testify and produce evidence before this Grand Jury. And now I want to explain to you that there is no constitutional or legal objection to instructing and compelling you to give this testimony and produce this evidence because full and absolute immunity is being granted to you with respect to all matters on which you are compelled to testify. I want to point out to you that, since under this provision of law there is no longer any ground for the assertion of your constitutional right—or your otherwise constitutional right—against self-incrimination, having been granted immunity under the terms of this statute, when the Court instructs you to give answers, to give testimony, produce evidence, should you refuse to do so, you must have in mind that you face a citation for contempt of Court, and a refusal to comply with any of the instructions of the Court would result in such proceedings for contempt of court as might entail, as a consequence, severe penalties against you, including prison. Now, to make it doubly clear to you, I'm going farther and say that the immunity which is granted to you by virtue of these proceedings extends, not only to federal prosecution, but extends to any prosecution by the state. I think the terms of this statute have been satisfied, so that if there are material, necessary matters to this proceeding, we'll now proceed to consider them. I think the United States Attorney is entitled to instruction from you, under the penalty for contempt if you refuse to answer questions. Now, Mr. United States Attorney, would you draw my attention to the questions.

Mr. Tendy: Yes sir. If Your Honor will refer to the

Government's Exhibit 3A In Evidence

Grand Jury proceedings of February 12, 1964, which are attached to the Government's application, specifically Page 2 of the proceedings of that date and the transcript which has the initials, EJC,—

Judge Wyatt: Excuse me. Mr. Shillitani, you may be seated. It's not necessary for you to stand the whole time.

Mr. Tendy: —which have the initials, EJC-1, indicating the first page, in the upper left-hand corner.

Judge Wyatt: I see.

Mr. Tendy: Page 2 of that transcript, the top of the page, the question,

“Do you work, Mr. Shillitani?”

And then skipping a question and coming down to the question,—

Judge Wyatt: That's the first question?

Mr. Hendy: That's the first question.

Judge Wyatt: All right.

Mr. Tendy: Then—

“You aren't employed by anybody at all?”

Judge Wyatt: That's the second—

Mr. Tendy: That's the second question.

Judge Wyatt: All right.

Mr. Tendy: Now, on Page 4 of the transcript, Your Honor, the first question at the top of the page, which reads:

“How well do you know Mattie Ianiello?”

Judge Wyatt: That's the third question?

Mr. Tendy: That's the third question. And on the same page, shortly below the middle of the page, the question which reads:

“Foggia. You have a nickname, Sallie Shields, right?”

Government's Exhibit 3A In Evidence

The following question:

"Do you have any interest at all in a night club?"

Judge Wyatt: Are you asking for an instruction as to, "You have a nickname"?

Mr. Tendy: That's right, sir.

Judge Wyatt: All right, that's the fourth question. "Do you have any interest in a night club"—that's the fifth question.

Mr. Tendy: That's right. And the folling question on that page:

"Do you have any interest in any business?"

Judge Wyatt: Yes.

Mr. Tendy: And now if you'll turn to the Grand Jury testimony of February 12 with the initials, RSK-1, in the upper left-hand corner.

Judge Wyatt: Yes.

Mr. Tendy: On Page 3 thereof, at the bottom of the page, the question:

"Well, do you have a job?"

Judge Wyatt: Wait—what page?

Mr. Tendy: Page 3.

Judge Wyatt: Yes—"Do you have a job?"

Mr. Tendy: Yes sir. I request an instruction on that. And now, if Your Honor would turn—

Judge Wyatt: That's the seventh question?

Mr. Tendy: Yes sir. If Your Honor would now turn to the transcript of April 22, 1964,—

Judge Wyatt: Yes.

Mr. Tendy: —on Page 2, the question at the top of the page:

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"Who advised you to refuse to answer on the grounds that your answers may incriminate you?"

Judge Wyatt: That's the eighth question?

Mr. Tendy: Yes sir. Then on Page 3 of that transcript, a little bit above the middle of the page, the question:

"Are you in business?"

Judge Wyatt: Yes.

Mr. Tendy: And then the next question:

"So that you'll understand the purpose of this Grand Jury proceeding, let me tell you this. There's been testimony before a Senate committee, and statements made to federal law enforcement agencies, that a person named Thomas Lucchese is the head of a group of individuals who are involved in a number of illegal activities."

Judge Wyatt: Yes, I see that question you mean.

Mr. Tendy: The question that begins that way.

Judge Wyatt: That's the tenth question.

Mr. Tendy: Yes sir. And then the following question:

"Do you know Thomas Lucchese?"

Judge Wyatt: Yes.

Mr. Tendy: And the following question:

"Did you ever hear of him?"

And on Page 4, at the top of the page:

"Did you ever read about him in the newspapers?"

The next one:

"Do you know a person named Johnny Dioguardi?"

Government's Exhibit 3A In Evidence

Judge Wyatt: Yes.

Mr. Tendy: The next one:

"Do you know a person named John Ormento?"

"Do you know a person named Salvatore Santoro?"

"Do you know a person named Angelo Tuminaro?"

"Do you know a person named Salvatore Lo Proto?"

"Do you know a person named Vincent Rao?"

"Did you ever hear that any of the people whose names I've just mentioned were, in fact, involved in the illicit narcotics traffic?"

"Are you involved in the illicit narcotics traffic?"

"Do you have an income?"

"If you have an income, is any of it derived from your participation in the illicit narcotics traffic?"

On Page 5, sir:

"Are you suggesting that you are involved?"

Next one:

"Do you know of anyone who is involved in the illicit narcotics traffic?"

And then, skipping two questions:

"It's all right. Just let me finish the question. Do you know whether or not anyone who is affiliated with Thomas Lucchese is, in fact, involved in the illicit narcotics traffic?"

"Did you ever hear that any of them were involved in such traffic?"

Now, if Your Honor would please turn to the transcript of the proceedings of May 6, on the first page of that transcript, the third question on the page; the one which begins:

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"I'm going to continue the questioning that we left off about a week or so ago, Mr. Shillitani. Back in 1951 you were convicted with a person named Joseph Orsini, a person named Francois Spirito and a person named Carmelo Sansone for violating the federal narcotic laws, and at that time you received a sentence of fifteen years. From whom did you get the narcotics that were the subject of that indictment?"

And the following question:

"How long had you been dealing with the person from whom you got these narcotics?"

"When did you first begin to deal in narcotics?"

"Who did you first deal with?"

"When did you first go into the narcotics business with Spirito and Sansone?"

"The amount of narcotics in that particular indictment strongly suggests that some one of the people that you were indicted with had an overseas contact for narcotic drugs. Who was that contact?"

"The narcotics which were the subject of that particular indictment, were they pure narcotics or had they been cut?"

"If the drugs had been cut after they'd been received by you people from overseas, who did the cutting?"

"How much did you pay for them?"

"Now, you were released in 1960, but you were returned to prison in 1961, I believe, for violation of parole. At about that time Sansone, who had been released from the charge that he was convicted with you in '51, was again convicted of violating the federal narcotic laws. At the time of his second conviction did you have any contact with him?"

"Do you know anything about the facts of Sansone's second conviction?"

Government's Exhibit 3A In Evidence

"When Sansone was convicted the second time, he had a co-defendant named Buttafoco. Do you know him?"

"Sansone was pretty closely connected with a notorious Canadian violator named Giuseppe Catroni, and, in fact, on occasions received his narcotics from Catroni. Did you ever hear of Catroni?"

"Did Sansone ever discuss him with you?"

"Will you tell this Grand Jury anything you know about Sansone's overseas connections for narcotics?"

"It's been established in trials in this Court—this District, rather—that the Catroni mob in Montreal on occasions received their narcotics from a Frenchman named Antronuk Paroutian. Did you ever hear of him?"

"It's been established in this District that Paroutian had a Frenchman as a partner whose name was Gabriel Graziani. Did you ever hear of him?"

"Well, if Catroni was able to get his drugs from Paroutian and Graziani, and Sansone was able to get his drugs on occasion from Catroni, and you and Sansone were in the narcotics business together, you must have some knowledge of Sansone's sources of supply. Who are they?"

"Are you aware of the fact that Paroutian and Graziani were indicted in the Southern District of New York?"

"Were you aware of the fact that we had to extradict Paroutian from Lebanon?"

"Are you aware of the fact that Paroutian was tried and convicted on that narcotics indictment and is presently serving a twenty-year sentence?"

"Since Paroutian has been back in the United States and in prison, have you had any contact with him?"

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"When Paroutian and Graziani were here in the United States, the monies which they received for the narcotics that they supplied to people in the Southern District of New York were deposited in Swiss banks through Swiss bank representatives here in New York. What do you know about that?"

"Are you aware of the fact that Paroutian and Graziani kept an apartment out at Kew Gardens?"

"Don't you know that they concealed substantial quantities of narcotic drugs in this apartment?"

"These are the same people that were the sources of supply for Catroni, who, in turn, on occasion supplied your co-defendant and friend and business associate, Sansone."

"During the period of their tenancy in this apartment, Paroutian and Graziani left temporarily for Europe, through Canada. While they were absent from the apartment, a Canadian named Peter Stepanoff came into the apartment and took seventeen kilograms of heroin out of it. What do you know about that?"

"Do you know anything about it?"

"Isn't it a fact that Stepanoff stole that amount of drugs out of the apartment?"

"Well, if he didn't steal them, how much money did he pay Paroutian and Graziani for them?"

"There was a Government informant in that case named Angelo Sonessa. Did you ever hear of him?"

"In or about October of 1960 Sonessa was murdered because of his informing to the Government. Who killed him?"

"Where is his body?"

"Did you know Sonessa's partner, Joe Vecchio?"

"While Vecchio was under indictment for violating the narcotic laws in this District, he was killed

Government's Exhibit 3A In Evidence

in an automobile accident under rather mysterious circumstances. What do you know about that?"

"He was also suspected of being an informant. Do you know that?"

"Did you ever hear of a person named Phil Rostelli?"

"How long was Rostelli acting as a courier for Catroni? Rather, between Catroni and the Canadian narcotics traffic?"

"Where is Rostelli now?"

Those are the questions, Your Honor, which were asked of this defendant and which the Government requests that the Court direct this defendant to answer, among any others that may be pertinent, at a future date.

Judge Wyatt: Now, Mr. Shillitani, having considered these questions, and against the background that I've explained to you, I'm going to instruct you, before this Grand Jury, to answer these questions. Listen to them very carefully. They don't include all of the questions that the United States Attorney's asked you, but they include most of them. The first question I instruct you to answer is:

"Do you work?"

Second:

"You aren't employed by anybody at all?"

The third:

"How well do you know Mattie Ianiello?"

Fourth:

"You have a nickname, Sallie Shields, right?"

The fifth:

"Do you have any interest at all in a night club?"

Government's Exhibit 3A In Evidence

Sixth:

"Do you have any interest in any business?"

Seventh:

"Do you have a job?"

Eighth:

"Are you in business?"

Nine—and so the record may be straight, I'm omitting the question at the top of EJC-2—

Mr. Tendy: When you've completed, I'd like to be heard on that question, if I may. Thank you, sir.

Judge Wyatt: Nine:

"So that you'll understand the purpose of this Grand Jury proceeding, let me tell you this. There's been testimony before a Senate committee, and statements made to federal law enforcement agencies, that a person named Thomas Lucchese is the head of a group of individuals who are involved in a number of illegal activities. It's also been alleged that one of the activities that members of this group participate in is the illegal or the illicit narcotics traffic. It's also been alleged that you are or were a member of this group. Is this true or false?"

Next question:

"Do you know Thomas Lucchese?"

The next question:

"Do you know a person named Johnny Dioguardi?"

The next:

"Do you know a person named John Ormento?"

Government's Exhibit 3A In Evidence

The next:

"Do you know a person named Salvatore Santoro?"

The next:

"Do you know a person named Angelo Tummaro?"

"Do you know a person named Salvatore Lo Proto?"

"Do you know a person named Vincent Rao?"

"Are you involved in the illicit narcotics traffic?"

"Do you have an income?"

"If you have an income, is any of it derived from your participation in the illicit narcotics traffic?"

"Do you know of anyone who is invited in the illicit narcotics traffic?"

"Do you know whether or not anyone who is affiliated with Thomas Lucchese is, in fact, involved in the illicit narcotics traffic?"

"Back in 1951 you were convicted with a person named Joseph Orsini, a person named Francois Spirito and a person named Carmelo Sansone for violating the federal narcotics laws, and at that time you received a sentence of fifteen years. From whom did you get the narcotics that were the subject of that indictment?"

"How long had you been dealing with the person from whom you got these narcotics?"

"When did you first begin to deal in narcotics?"

"Who did you first deal with?"

"When did you first go into the narcotics business with Spirito and Sansone?"

"The amount of narcotics in that particular indictment strongly suggests that some one of the people that you were indicted with had an overseas contact for narcotic drugs. Who was that contact?"

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"The narcotics which were the subject of that particular indictment, were they pure narcotics or had they been cut?"

"How much did you pay for them?"

"Now, you were released in 1960, but you were returned to prison in 1961, I believe, for violation of parole. At about that time Sansone, who had been released from the charge that he was convicted on with you in '51, was again convicted of violating the federal narcotic laws. At the time of his second conviction did you have any contact with him?"

"When Sansone was convicted the second time, he had a co-defendant named Bottofoco. Do you know him?"

"Sansone was pretty closely connected with a notorious Canadian violator named Giuseppe Catroni, and, in fact, on occasions received his narcotics from Catroni. Did you ever hear of Catroni?"

"Did Sansone ever discuss him with you?"

"Will you tell this Grand Jury anything you know about Sansone's overseas connections for narcotics?"

"Did you ever hear of Antronuk Paroutian?"

"It's been established in this District that Paroutian had a Frenchman as a partner whose name was Gabriel Graziani. Did you ever hear of him?"

"Well, if Catroni was able to get his drugs from Paroutian and Graziani, and Sansone was able to get his drugs on occasion from Catroni, and you and Sansone were in the narcotics business together, you must have some knowledge of Sansone's sources of supply. Who are they?"

"Since Paroutian has been back in the United States and in prison, have you had any contact with him?"

Government's Exhibit 3A In Evidence

"When Paroutian and Graziani were here in the United States, the monies which they received for the narcotics that they supplied to people in the Southern District of New York were deposited in Swiss banks through Swiss bank representatives here in New York. What do you know about that?"

"Are you aware of the fact that Paroutian and Graziani kept an apartment out at Kew Gardens?"

"Don't you know that they concealed substantial quantities of narcotic drugs in this apartment?"

"During the period of their tenancy in this apartment, Paroutian and Graziani left temporarily for Europe, through Canada. While they were absent from the apartment, a Canadian named Peter Stepanoff came into the apartment and took seventeen kilograms of heroin out of it. What do you know about that?"

"Do you know anything about it?"

"Isn't it a fact that Stepanoff stole that amount of drugs out of the apartment?"

"Well, if he didn't steal them, how much money did he pay Paroutian and Graziani for them?"

"There was a Government informant in that case named Angelo Sonessa. Did you ever hear of him?"

"In or about October of 1960 Sonessa was murdered because of his informing to the Government. Who killed him?"

"Where is his body?"

"Did you know Sonessa's partner, Joe Vecchio?"

"While Vecchio was under indictment for violating the narcotic laws in this District, he was killed in an automobile accident under rather mysterious circumstances. What do you know about that?"

"Did you ever hear of a person named Phil Rostelli?"

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"How long was Rostelli acting as a courier for Catroni? Rather, between Catroni and the Canadian narcotics traffic?"

"Where is Rostelli now?"

Judge Wyatt: I believe that's the end, isn't it?

Mr. Tendy: That's correct, sir. I'd like the record to reflect that the Grand Jury stenographer is now being changed and that Mrs. Kass is the stenographer, and Mr. Martin, an Assistant United States Attorney, is now in the courtroom.

Judge Wyatt: Now, Mr. Shillitani, I direct that you appear before this Grand Jury, and that you study these questions, and that you answer each and every one of these questions.

Witness: May I say something? I see here now that I would have to have advice from my attorney before I say anything. I'll make myself clear of that point.

Mr. Tendy: I would like the record to reflect, Your Honor, that in his initial Grand Jury appearance he was represented by Mr. Irving Rader. And the Grand Jury transcript will reflect quite clearly—I say this more or less for the record—that on that occasion he was given the opportunity to discuss the situation with Mr. Rader, and that he did indicate before the Grand Jury that Mr. Rader had advised him of his rights.

Judge Wyatt: Well, I've made the explanation, and you understand that your failure to answer these questions will subject you to the penalties of contempt, as I have indicated.

Witness: I don't have the privilege of consulting my attorney?

Judge Wyatt: Well, I don't know when you want Mr. Shillitani to answer these questions.

Mr. Tendy: I can put the questions to him right now, with the Grand Jury present, and he can do as he wishes to

Government's Exhibit 3A In Evidence

do. And since he has requested this opportunity to discuss these questions with counsel, I ask that he return tomorrow morning with counsel.

Judge Wyatt: Well, I so instruct you, Mr. Shillitani.

Witness: I still say I don't have the privilege of consulting with my attorney before I say one word here?

Judge Wyatt: I'll defer until tomorrow morning under those circumstances.

Mr. Tendy: All right. Be here tomorrow morning with your attorney; you're not going to be asked questions, certainly, not before that time.

Witness: Your Honor, may I say that I first have to—I don't have any money or an attorney; I've got to find my family for some money to get it; I can't do that in one day; unless the court wants to appoint an attorney. Well, then, I'll be here at nine-thirty, with an attorney that you appoint.

Judge Wyatt: I direct you to be here at nine-thirty in the morning. If you don't have an attorney at that time, you simply will have to make your statement to the court. Is there any other business before the court?

Mr. Tendy: That's all, Your Honor. Would you please request the Grand Jury to be present tomorrow morning at nine-thirty?

Judge Wyatt: Yes. Mr. Foreman and members of the Grand Jury, I hope you all realize that this court appreciates your attention. We have a calendar in this court which requires us to be here at ten-thirty. I shall be compelled to ask you, under the circumstances, to be here tomorrow morning at nine-thirty. At this time you are all now excused.

(End of Session).

Judgment and Commitment

(5) UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 64-CR-715

UNITED STATES OF AMERICA

—V.—

SALVATORE SHILLITANI

On this 10th day of August, 1964, came the attorney for the government and the defendant appeared in person and by counsel

IT IS ADJUDGED that the defendant having been found guilty of criminal contempt in that he wilfully disobeyed the lawful orders of this Court by his refusal on July 2 and August 4, 1964 to answer questions which he was ordered and directed by this Court to answer and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

IT IS ADJUDGED that the defendant is guilty of criminal contempt and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) YEARS, or until further order of this Court, should Salvatore Shillitani answer before the grand jury the questions which appear on the record as he was ordered to answer and should defendant answer those questions before the ex-

Judgment and Commitment

piration of said sentence or the discharge of said grand jury, whichever may first occur, the further order of this Court may be made terminating the sentence of imprisonment.

IT IS ADJUDGED that the defendant's oral motion for bail pending appeal is denied.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LLOYD F. MACMAHON,
United States District Judge.

JAMES E. VALECHE,
Clerk.

Notice of Appeal

(6) **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF NEW YORK

IN RE

SALVATORE SHILLITANI

Name and Address of Appellant:

**Salvatore Shillitani,
435 West 57th Street,
New York City, N.Y.**

Name and Address of Appellant's Attorney:

**Stanley L. Siegel,
280 Broadway,
New York, N.Y.**

Offense:

Criminal Contempt of Court.

Concise statement of judgment:

**Two years imprisonment or until further order of
Court. Sentenced on August 10th, 1964, by Honorable
Lloyd MacMahon.**

Name of Institution Confined:

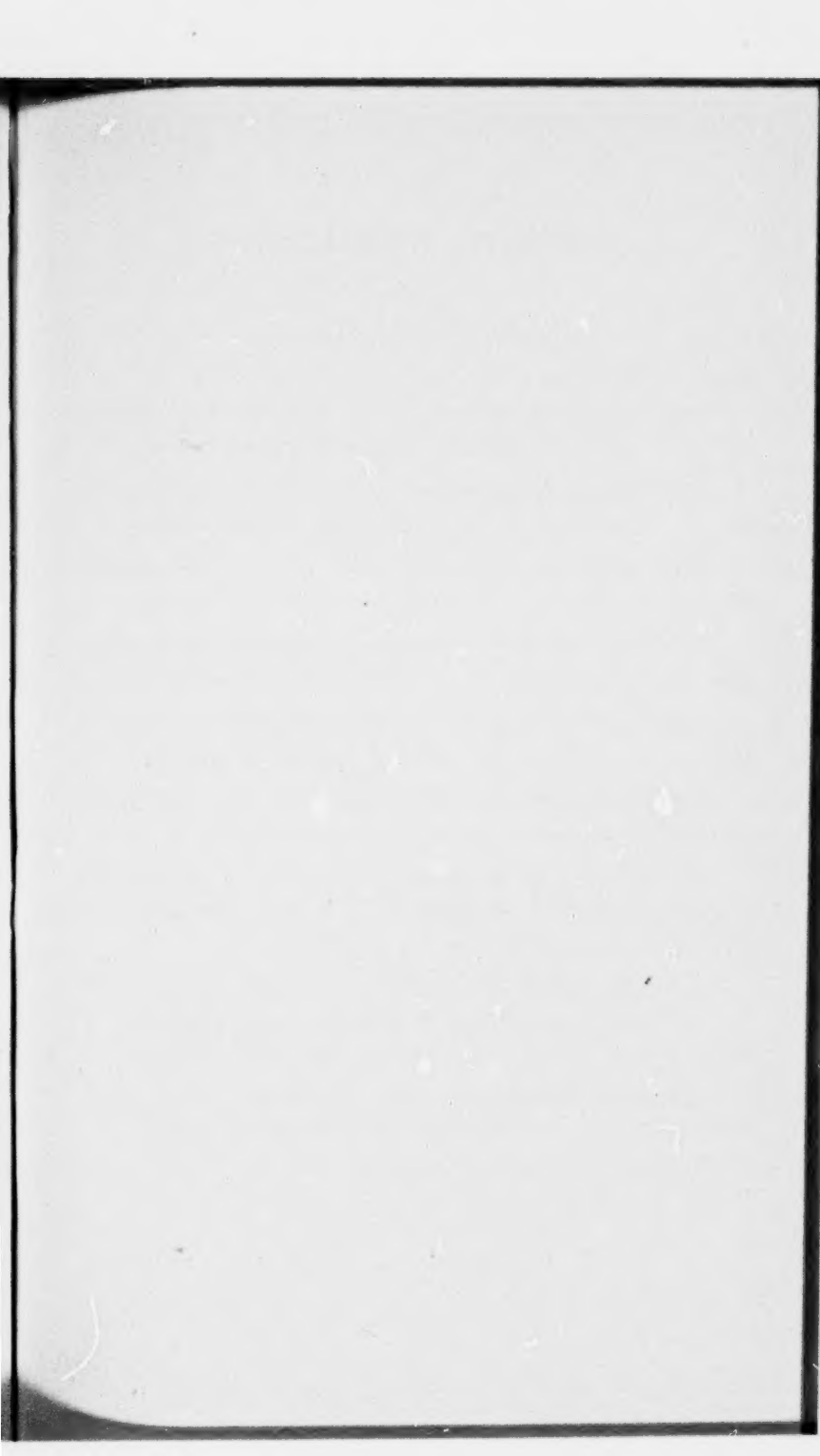
**Federal House of Detention,
New York City.**

Notice of Appeal

I, the above-named appellant, hereby appeal to the United States Court of Appeals, for the Second Circuit from the above stated judgment.

Dated: New York, August 10, 1964

STANLEY L. SIEGEL
Attorney for Appellant
Office & P.O. Address
280 Broadway
New York, New York



GOVERNMENT APPENDIX

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APPENDIX

Government Exhibit 2C, Transcript of Grand Jury Proceedings on February 12, 1964

Sept. Spec.

February 12, 1964

Re: John Doe

Messrs. Tendy, Lawler

SALVATORE SHILLITANI, called as a witness, having been duly sworn by the Foreman, testified as follows:

By Mr. Tendy:

Q. Will you tell the Grand Jury your name, please. Turn around and face the Grand Jury. Your name? A. Salvatore Shillitani [spells].

Q. Mr. Shillitani, how old are you? A. Fifty-seven.

Q. Can you give us your date of birth. A. What?

Q. Your date of birth, your birth date. A. Oh, November 21, 1905, or 1906—I'm not sure.

Q. Where do you live, Mr. Shillitani? A. 435 West 57th Street.

Q. Is that an apartment or a private house or a rooming— A. An apartment.

Q. What apartment is it? A. 1-H.

Q. Can you tell me how much rent you pay? A. One-fifty-five a month.

Q. Are you married? A. Yes.

Q. What is your wife's first name? A. Lena.

Q. Do you remember her maiden name or do you know her maiden name? A. Rumis [spells].

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Q. Do you have any children? A. No, sir.

Q. None at all. Do you own an automobile? A. No sir.

Q. Do you have a license to drive an automobile? A. No sir.

Q. Do you work, Mr. Shillitani? A. I refuse to answer on the grounds it may incriminate me.

Q. How long have you been living at that address up there? A. Oh, about a year, a year and a— a little over a year, I suppose.

Q. You aren't employed by anybody at all? A. I refuse to answer on the grounds that it might incriminate me.

Q. By the way, before you came in here this morning did you talk to an attorney? A. Well, you enlightened me to—and I sent for an attorney; I don't know why. I don't know why I need an attorney.

Q. Well, do you have an attorney now? A. Yes.

Q. Is he outside? A. Yes.

Q. Would you tell me his name, please. A. Of course. Here's his card.

Mr. Tendency: I have the name of Irving Rader [spells]. His address is 335 Broadway, and his telephone number is Walker 5-2280. I'm reading from Mr. Rader's business card.

Q. Let me ask you this, Mr. Shillitani—before you came into the Grand Jury room did you consult with Mr. Rader? A. I refuse to answer on the grounds it might incriminate me.

Q. Would you like an opportunity to go out and talk

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Proceedings on February 12, 1964*

with him if you did not speak with him? A. I'll talk to him. Want me to talk to him?

Q. What I want to know is this—and you don't have to answer it until you talk to him. I want to know whether or not you've spoken to him; if you've spoken to him, has he advised you of your rights, things like that. Do you understand what I'm saying. A. You want me to ask him the question you just asked me?

Q. I want to ask you whether or not you've consulted with him, and has he advised you of your rights. A. Well, I have an attorney out there. You want me to consult him?

Q. I think you should, by all means. A. Well, then, I'll tell him what you just told me.

Q. Sure. If you have any other questions, you come in and tell me. A. Right.

[Witness leaves room, then returns]

Witness: He answered to your question about if I—he says yes, he advised me of my rights.

Q. So you know what your rights are; I don't have to advise you any further. A. That's right.

Q. Has your attorney advised you not to answer these questions? A. Well, he didn't say yes or no on that matter. He just advised me that I'm coming in here and answer the questions that—that I think is right.

Q. Okay. All right. A. I'll put it that way. He didn't actually say it that way, but I'll put it that way.

Q. I understand. By the way, you can smoke if you want to. A. I don't have to smoke. Thank you.

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Q. How well do you know Mattie Ianiello? A. I refuse to answer on the grounds it might incriminate me.

Q. By the way, how long have you been married? A. One year and a half.

Q. Is your wife Puerto Rican, Cuban? A. No, Italian.

Q. The reason I ask is because of the spelling. A. Well, it's what you call Northern Italy, near Trieste, so there's a—I don't know if it's Yugoslavia or—mixture in the names; but she's full-breed Italian.

Q. By the way, you were born in the United States, I assume. A. Yes sir.

Q. And your parents, I guess, are Italian? A. Born in Italy.

Q. Do you know where they were born, Mr. Shillitani? A. Yes, Foggia, Italy. That would be near Bari. Well, Foggia [spells].

Q. Foggia. You have a nickname, Sallie Shields, right? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you have any interest at all in a night club? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you have any interest in any business? A. I refuse to answer on the grounds it might incriminate me.

Q. I want you to go out and talk to your lawyer again. This is what I want you to talk to him about—you tell your lawyer that I'm informing you that there are certain areas that we can question you about and if you refuse to answer the questions in those areas, the Government can grant you immunity from prosecution. That means

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that you can no longer tell me that you won't answer because your answers— A. What—

Q. Just a minute, let me finish. A. I'm sorry.

Q. You can no longer tell me that you refuse to answer because your answers will incriminate you. When you're granted immunity, they can't incriminate you. Now, if you're granted immunity, Mr. Shillitani, and if you still refuse to answer those questions, you could go to jail. Now my question to you is this—and don't answer it, go out and talk to your lawyer about it first—if you are granted immunity, would you still refuse to answer questions? That's what I want you to talk to your lawyer about. Do you understand me? A. Um-hm.

Q. Do you have anything to ask me before you go outside? A. No. I'll tell him what you say.

Q. All right, go out and talk to him.

[Witness leaves room]

(Continued by RSK)

Sept. Sp.

February 12, 1964.

Re: John Doe

Mr. Tendy (Mr. Lawler)

SALVATORE SHILLITANI, returned, testified as follows:

By Mr. Tendy:

Q. Now, have you spoken with your attorney? A. Yes.

Q. All right. A. To your question, he advised me not

*Government Exhibit 2C, Transcript of Grand Jury
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to recognize immunity, and I refuse to answer the question, it might incriminate me.

Q. I don't understand. I don't understand you. When you tell me that your lawyer advised you not to recognize immunity: do you want to clarify that point? A. Well, no; he told me that you don't have to, and I don't want to recognize immunity.

Q. So that, even if you had to go to jail, you still would refuse to answer? A. I refuse to answer on the grounds that might incriminate me.

Q. Well, isn't that what you're telling me? That you refuse to answer even if you were given immunity? A. That's right.

Q. And that's your decision? A. That's my decision.

Q. Your lawyer didn't tell you that? A. That's my decision.

Q. I see. Is this your first marriage, Mr. Shillitani? A. No; my second marriage.

Q. Were you divorced, or did your first wife die, or what? If I may ask you? A. (Nods.)

Q. Do you have any children? A. (Nods.)

Q. You nodded your head to that question, so it was a double-barreled answer. A. I understood you; yes, I was divorced.

Q. You were divorced? A. Yes.

Q. Do you have any children by that marriage? A. No.

Q. When were you divorced? A. 1952.

Q. Did you get your divorce, or did your wife get the divorce? A. My wife got the divorce.

Q. Was that in New York, or some other state? A. New York State, yes.

*Government Exhibit 2C, Transcript of Grand Jury
Proceedings on February 12, 1964*

Q. Is there any question that I would ask you this morning, any additional question, that you'd answer? A. I don't know what you mean.

Q. By the way, when did your wife come to the United States, if you know? A. Oh, now, this is——

Q. A guess. I understand. Don't worry about it. A. About three and a half years, I guess.

Q. Let me ask you this: is she in the United States legally? A. Oh, of course.

Q. You're sure of that? A. Oh, positively sure of that.

Q. Has she applied for citizenship papers? A. Well, she's on the making of half-citizen first.

Q. I understand that. A. Yes, but she can't apply now. She's a permanent resident as of now, because I'm born in America.

Q. Do you happen to know how it was that she came to the United States? Was she part of a quota system, or what? If you know. A. Well, yes, partly, but I'm not too certain of giving you all the fact of how she got here, but I do know she came here as a tourist, or sponsorship, I would say.

Q. I see. Do you know who her sponsorship was? A. No, offhand.

Q. Does she work? A. No, sir.

Q. Has she worked at all since she's been in the United States. I mean, has she had a job, if you know? A. Has she had a job? I couldn't say.

Q. Did you know her before she came to the United States? A. No.

Q. How old is she? A. Oh, forty-nine,—forty-nine and months.

*Government Exhibit 2C, Transcript of Grand Jury
Proceedings on February 12, 1964*

Q. And you won't tell me what you're doing for a living?

A. I refuse to answer on the grounds it might incriminate me.

Q. What can be incriminating about a job, if you have it? A. I refuse to answer on the grounds it might incriminate me.

Q. Well, do you have a job? A. I refuse to answer on the grounds it might incriminate me.

Q. All right, Mr. Shillitani.

Mr. Tandy: Would you instruct him to return on March 4th, at ten-thirty in the morning?

Foreman: I direct you to return here March 4th, Wednesday morning, at ten-thirty AM.

Witness: All right.

(Witness leaves room.)

**Government Exhibit 2D, Transcript of Grand Jury
Proceedings on April 22, 1964**

Sept. Spec.

April 22, 1964

Re: John Doe

Messrs. Tendy, Lawler

SALVATORE SHILLITANI, recalled as a witness, having been duly sworn by the Deputy Foreman, testified as follows:

By Mr. Tendy:

Q. You're Salvatore Shillitani, is that correct? A. Yes.

Q. Do you have a middle initial, Mr. Shillitani? A. No.

Q. You were before this Grand Jury in February of this year, if you recall. A. [Nods]

Q. At that time you were represented by an attorney named Irving Rader, isn't that correct? A. Um-hm.

Q. And you recall that during the course of my questioning you, you were permitted to consult with Mr. Rader and he advised you of your rights. Do you recall that, sir? A. Yeah.

Q. I wish you'd speak instead of nodding.— A. Yes.

Q. —so that the stenographer can get it. Have you consulted with Mr. Rader before you came here this morning? A. No.

Q. Do you still recall what his advice was as to your constitutional rights? A. I refuse to answer on the grounds it may incriminate me.

Q. Do you have any question as to what your constitutional rights are? A. I refuse to answer on the grounds that it may incriminate me.

*Government Exhibit 2D, Transcript of Grand Jury
Proceedings on April 22, 1964*

Q. Who advised you to refuse to answer on the grounds that your answers may incriminate you? A. I refuse to answer on the grounds that it may incriminate me.

Q. Are you represented by an attorney now? A. No sir.

Q. Do you intend to get an attorney? A. No sir.

Q. Don't you think you'd be wise to have an attorney, have the advice of counsel? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you want me to advise you of your constitutional rights? A. I refuse to answer on the grounds it might incriminate me.

Q. Well, I'll do it anyhow. You have a right not to answer on the grounds that your answers might tend to incriminate you. Apparently you know that already so it seems hardly necessary for me to give you this advice. I also tell you that if you do answer my questions, the answers you give me might be used against you in a criminal proceeding. Do you understand that? A. I refuse to answer on the grounds it might incriminate me.

Q. It's quite obvious that your refusal to answer is no indication of your lack of understanding of what I'm saying. A. I refuse to answer on the grounds it might incriminate me.

Q. Where do you live? A. 435 West 57th Street.

Q. How long have you lived there? A. A year and a month, I guess.

Q. Is that an apartment house? A. Yes sir.

Q. Apartment 1-H, isn't it? A. Right.

Q. How much rent do you pay? A. One-fifty-five.

Q. You live there with your wife? A. Yes.

*Government Exhibit 2D, Transcript of Grand Jury
Proceedings on April 22, 1964*

Q. You've been married a little bit over a year and a half, I understand, is that correct? A. Yes.

Q. You've also been known by the nickname, Sallie Shields, is that correct? A. I refuse to answer on the grounds it might incriminate me.

Q. Are you in business? A. I refuse to answer on the grounds it might incriminate me.

Q. So that you'll understand the purpose of this Grand Jury proceeding, let me tell you this. There's been testimony before a Senate committee, and statements made to federal law enforcement agencies, that a person named Thomas Luchese is the head of a group of individuals who are involved in a number of illegal activities. Its also been alleged that one of the activities that members of this group participate in is the illegal or the illicit narcotics traffic. It's also been alleged that you are or were a member of this group. Is true or false? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know Thomas Luchese? A. I refuse to answer on the grounds it might incriminate me.

Q. Did you ever hear of him? A. I refuse to answer on the grounds it might incriminate me.

Q. Did you ever read about him in the newspapers? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named Johnny Dioguardi? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named John Ormento? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named Salvatore Santoro?

*Government Exhibit 2D, Transcript of Grand Jury
Proceedings on April 22, 1964*

A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named Angelo Tuminaro?

A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named Salvatore Lo Proto?

A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named Vincent Rao? A. I refuse to answer on the grounds it might incriminate me.

Q. Did you ever hear that any of the people whose names I've just mentioned were, in fact, involved in the illicit narcotics traffic? A. I refuse to answer on the grounds it might incriminate me.

Q. Are you involved in the illicit narcotics traffic? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you have an income? A. I refuse to answer on the grounds it might incriminate me.

Q. If you have an income, is any of it derived from your participation in the illicit narcotics traffic? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you participate in the illicit narcotics traffic? A. I refuse to answer on the grounds it might incriminate me.

Q. Are you suggesting that you are involved? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know of anyone who is involved in the illicit narcotics traffic? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know whether or not anybody who is affiliated with Thomas Luchese— A. I refuse to answer—

Q. Wait a minute. A. I'm sorry.

*Government Exhibit 2D, Transcript of Grand Jury
Proceedings on April 22, 1964*

Q. It's all right. Just let me finish the question. Do you know whether or not anyone who is affiliated with Thomas Luchese is, in fact, involved in the illicit narcotics traffic? A. I refuse to answer on the grounds it might incriminate me.

Q. Did you ever hear that any of them were involved in such traffic? A. I refuse to answer on the grounds it might incriminate me.

Mr. Tendy: Mr. Foreman, May 6th.

Foreman: You are directed to return May 6, Wednesday, at ten o'clock in the same room.

Witness: Wednesday?

Foreman: Wednesday.

Mr. Tendy: May 6th.

Witness: Thank you.

[Witnessed excused]

**Government Exhibit 2E, Transcript of Grand Jury
Proceedings on May 6, 1964**

Sept. Spec.

May 6, 1964

Re: John Doe

Messrs. Tendy, Lawler

SALVATORE SHILLITANI, recalled as a witness, having been duly sworn by the Foreman, testified as follows:

By Mr. Tendy:

Q. You're Salvatore Shillitani, is that correct? A. That's right.

*Government Exhibit 2E, Transcript of Grand Jury
Proceedings on May 6, 1964*

Q. S-h-i-l-l-i-t-a-n-i. A. Yes sir.

Q. I'm going to continue the questioning that we left off about a week or so ago, Mr. Shillitani. Back in 1951 you were convicted with a person named Joseph Orsini, a person named Francois Spirito and a person named Carmelo Sansone for violating the federal narcotic laws, and at that time you received a sentence of fifteen years. From whom did you get the narcotics that were the subject of that indictment? A. I refuse to answer on the grounds it might incriminate me.

Q. How long had you been dealing with the person from whom you got these narcotics? A. I refuse to answer on the grounds it might incriminate me.

Q. When did you first begin to deal in narcotics? A. I refuse to answer on the grounds it might incriminate me.

Q. Who did you first deal with? A. I refused to answer on the grounds it might incriminate me.

Q. When did you first go into the narcotics business with Spirito and Sansone? A. I refuse to answer on the grounds it might incriminate me.

Q. The amount of narcotics in that particular indictment strongly suggests that some one of the people that you were indicted with had an overseas contact for narcotic drugs. Who was that contact? A. I refuse to answer on the grounds it might incriminate me.

Q. The narcotics which were the subject of that particular indictment, were they pure narcotics or had they been cut? A. I refuse to answer on the grounds it might incriminate me.

Q. If the drugs had been cut after they'd been received

*Government Exhibit 2E, Transcript of Grand Jury
Proceedings on May 6, 1964*

by you people from overseas, who did the cutting? A. I refuse to answer on the grounds it might incriminate me.

Q. How much did you pay for them? A. I refuse to answer on the grounds it might incriminate me

Q. Now, you were released in 1960, but you were returned to prison in 1961, I believe, for violation of parole. At about that time Sansone, who had been released from the charge that he was convicted on with you in '51, was again convicted of violating the federal narcotic laws. At the time of his second conviction did you have any contact with him? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know anything about the facts of Sansone's second conviction? A. I refuse to answer on the grounds it might incriminate me.

Q. When Sansone was convicted the second time, he had a co-defendant named Buttofooco. Do you know him? A. I refuse to answer on the grounds it might incriminate me.

Q. Sansone was pretty closely connected with a notorious Canadian violator named Giuseppe Catroni, and, in fact, on occasions received his narcotics from Catroni. Did you ever hear of Catroni? A. I refuse to answer on the grounds it might incriminate me.

Q. Did Sansone ever discuss him with you? A. I refuse to answer on the grounds it might incriminate me.

Q. Will you tell this Grand Jury anything you know about Sansone's overseas connections for narcotics. A. I refuse to answer on the grounds it might incriminate me.

Q. It's been established in trials in this Court—this District, rather—that the Catroni mob in Montreal on

*Government Exhibit 2E, Transcript of Grand Jury
Proceedings on May 6, 1964*

occasions received their narcotics from a Frenchman named Antronuk Paroutian. Did you ever hear of him?

A. I refuse to answer on the grounds it might incriminate me.

Q. It's been established in this District that Paroutian had a Frenchman as a partner whose name was Gabriel Graziani. Did you ever hear of him? A. I refuse to answer on the grounds it might incriminate me.

Q. Well, if Catroni was able to get his drugs from Paroutian and Graziana, and Sansone was able to get his drugs on occasion from Catroni, and you and Sansone were in the narcotics business together, you must have some knowledge of Sansone's sources of supply. Who are they? A. I refuse to answer on the grounds it might incriminate me.

Q. Are you aware of the fact that Paroutian and Graziani were indicted in the Southern District of New York?

A. I refuse to answer on the grounds it might incriminate me.

Q. Were you aware of the fact that we had to extradict [sic] Paroutian from Lebanon? A. I refuse to answer on the grounds it might incriminate me.

Q. Are you aware of the fact that Paroutian was tried and convicted on that narcotics indictment and is presently serving a twenty-year sentence? A. I refuse to answer on the grounds it might incriminate me.

Q. Since Paroutian has been back in the United States and in prison, have you had any contact with him? A. I refuse to answer on the grounds it might incriminate me.

Q. When Paroutian and Graziana were here in the United States, the monies which they received for the

*Government Exhibit 2E, Transcript of Grand Jury
Proceedings on May 6, 1964*

narcotics that they supplied to people in the Southern District of New York were deposited in Swiss banks through Swiss bank representatives here in New York. What do you know about that? A. I refuse to answer on the grounds it might incriminate me.

Q. Are you aware of the fact that Paroutian and Graziani kept an apartment out at Kew Gardens? A. I refuse to answer on the grounds it might incriminate me.

Q. Don't you know that they concealed substantial quantities of narcotic drugs in this apartment? A. I refuse—

Q. These are the same people that were the sources of supply for Catroni, who, in turn, on occasion supplied your co-defendant and friend and business associate, Sansone. A. I refuse to answer on the grounds it might incriminate me.

Q. During the period of their tenancy in this apartment, Paroutian and Graziani left temporarily for Europe, through Canada. While they were absent from the apartment, a Canadian named Peter Stepanoff came into the apartment and took seventeen kilograms of heroin out of it. What do you know about that? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know anything about it? A. I refuse to answer on the grounds it might incriminate me.

Q. Isn't it a fact that Stepanoff stole that amount of drugs out of the apartment? A. I refuse to answer on the grounds it might incriminate me.

Q. Well, if he didn't steal them, how much money did he pay Paroutian and Graziani for them? A. I refuse to answer on the grounds it might incriminate me.

*Government Exhibit 2E, Transcript of Grand Jury
Proceedings on May 6, 1964*

Q. There was a Government informant in that case named Angelo Sonessa. Did you ever hear of him? A. I refuse to answer on the grounds it might incriminate me.

Q. In or about October of 1960 Sonessa was murdered because of his informing to the Government. Who killed him? A. I refuse to answer on the grounds it might incriminate me.

Q. Where is his body? A. I refuse to answer on the grounds it might incriminate me.

Q. Did you know Sonessa's partner, Joe Vecchio? A. I refuse to answer on the grounds it might incriminate me.

Q. While Vecchio was under indictment for violating the narcotic laws in this District, he was killed in an automobile accident under rather mysterious circumstances. What do you know about that? A. I refuse to answer on the grounds it might incriminate me.

Q. He was also suspected of being an informant. Do you know that? A. I refuse to answer on the grounds it might incriminate me.

(Continued by RSK)

Q. Did you ever hear of a person named Phil Rostelli? A. I refuse to answer on the grounds it may intend to incriminate me.

Q. How long was Rostelli acting as a courier for Catroni? Rather, between Catroni and the Canadian narcotics traffic? A. I refuse to answer on the grounds it may intend to incriminate me.

Q. Where is Rostelli now? A. I refuse to answer on the grounds that it may intend to incriminate me.

*Government Exhibit 2E, Transcript of Grand Jury
Proceedings on May 6, 1964*

Mr. Tendy: Mr. Foreman, will you request him to return next Thursday, May 14th?

Foreman: You're directed to return Thursday, May 14th, at ten AM.

(Witness Leaves Room.)

**Government Exhibit 5, Transcript of Grand Jury
Proceedings on July 2, 1964**

Sept. Spec.

July 2, 1964

Re: John Doe

Mr. Tendy

SALVATORE SHILLITANI, called as a witness, and having been duly sworn by the Deputy Foreman of the Grand Jury, testified as follows:

By Mr. Tendy:

Q. You are Salvatore Shillitani (spelled), is that correct, sir? A. Yes.

Q. Mr. Shillitani, you have an attorney? A. I've had the opportunity of speaking with him only ten minutes and I need more time to speak to him.

Q. What's his name? Let me see his business card if you have it, heh? A. I need that card.

Q. I'll give it right back to you. Take it easy.

*Government Exhibit 5, Transcript of Grand Jury
Proceedings on July 2, 1964*

Mr. Tendy: I have been handed and the business card of Stanley L. Siegel, an attorney with offices at 280 Broadway, New York 7, New York. His telephone number is Worth 2-1295.

[Mr. Tendy hands card back to witness.]

Q. Now, Mr. Shillitani, yesterday you appeared before Judge Wyatt of this court and in certain proceedings before him you were directed by the court to answer the following questions before the Grand Jury. I'm going to ask you these questions now pursuant to the court's direction. Do you work, Mr. Shillitani? A. I refuse to answer on the grounds it may incriminate me.

Q. You aren't employed by anybody at all? A. I refuse to answer on the ground it may tend to incriminate me.

Q. How well do you know Mattie Ianiello? A. I refuse to answer on the grounds it may tend to incriminate me.

Q. You have a nickname, Sallie Shields, right? A. I refuse to answer on the grounds it may tend to incriminate me.

Q. Do you have any interest at all in a night club? A. I refuse to answer on the grounds it may tend to incriminate me.

Q. Do you have any interest in any business? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you have a job? A. I refuse to answer on the grounds it might incriminate me.

Q. Are you in business? A. I refuse to answer on the grounds it might incriminate me.

Q. So that you'll understand the purpose of this Grand Jury proceeding, let me tell you this: there has been testi-

*Government Exhibit 5, Transcript of Grand Jury
Proceedings on July 2, 1964*

mony before a Senate Committee, and statements have been made to Federal law enforcement agencies that a person named Thomas Lucchese is the head of a group of individuals who are involved in a number of illegal activities. It's also been alleged that one of the activities that members of this group participate in is the illegal or the illicit narcotics traffic. It's also been alleged that you are or were a member of this group. Is this true or false?
A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know Thomas Lucchese? A. I refuse to answer on the grounds it might incriminate me.

Q. Did you ever hear of him? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named Johnnie Dio Guardi?
A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named John Ormento? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named Salvatore Santoro? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named Angelo Tuminaro? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named Salvatore Lo Proto?
A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know a person named Vincent Rao? A. I refuse to answer on the grounds it might incriminate me.

*Government Exhibit 5, Transcript of Grand Jury
Proceedings on July 2, 1964*

Q. Are you involved in the illicit narcotics traffic? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you have an income? A. I refuse to answer on the same grounds.

Q. If you have an income is any of it derived from your participation in the illicit narcotics traffic? A. I refuse to answer on the same grounds.

Q. Do you know of anyone who is involved in the illicit narcotics traffic? A. I refuse to answer on the grounds it might incriminate me.

Q. Do you know whether or not anyone who is affiliated with Thomas Lucchese is in fact involved with the illicit narcotics traffic? A. I refuse to answer on the grounds it may incriminate me.

Q. Back in 1951 you were convicted with a person named Joseph Orsini, a person named Francois Spirito, and a person named Carmelo Sansone for violating the Federal Narcotic Laws, and at that time you received a sentence of 15 years. From whom did you get the narcotics that were the subject of that indictment? A. I refuse to answer on the grounds it may incriminate me.

Q. How long had you been dealing with the person from whom you got those narcotics? A. I refuse to answer on the same grounds.

Q. When did you first begin to deal in narcotics? A. I refuse to answer.

Q. Who did you first deal with? A. I refuse to answer on the same grounds.

Q. When did you first go into the narcotics business with Spirito and Sansone? A. I refuse to answer on the same grounds.

*Government Exhibit 5, Transcript of Grand Jury
Proceedings on July 2, 1964*

Q. The amount of narcotics in that particular indictment strongly suggests that someone of the people that you were indicted with had an overseas contact for narcotic drugs. Who was that contact? A. I refuse to answer on the same grounds.

Q. The narcotics which were the subject of that particular indictment, were they pure narcotics or had they been cut? A. I refuse to answer on the same grounds.

Q. How much did you pay for them? A. I refuse to answer on the same grounds.

Q. You were released in 1960 but you were returned to prison in 1961, I believe, for violation of parole. At about that time Sansone who had been released from the charge that he was convicted on with you in 1951 was again convicted of violating the Federal Narcotic Laws. At the time of his second conviction did you have any contact with him? A. I refuse to answer on the same grounds.

Q. Do you know anything about the facts of Sansone's second conviction? A. I refuse to answer on the same grounds.

Q. When Sansone was convicted the second time he had a co-defendant named Buttofuco. Do you know him? A. I refuse to answer on the same grounds.

Q. Sansone was pretty closely connected with a notorious Canadin violator, Giuseppe Catroni, and, in fact, on occasions received his narcotics from Catroni. Did you ever hear of Catroni? A. I refuse to answer on same grounds.

Q. Did Sansone ever discuss him with you? A. I refuse to answer on the same grounds.

*Government Exhibit 5, Transcript of Grand Jury
Proceedings on July 2, 1964*

Q. Will you tell this Grand Jury anything you know about Sansone's overseas connections for narcotics. A. I refuse to answer on the same grounds.

Q. It's been established in trials in this court—in this district, rather—that the Catroni mob in Montreal on occasions received their narcotics from a Frenchman named Antronuk Paroutian. Did you ever hear of him? A. I refuse to answer on the same grounds.

Q. It's been established in this district that Paroutian had a Frenchman as a partner whose name was Gabriel Graziani. Did you ever hear of him? A. I refuse to answer on the same grounds.

Q. If Catroni was able to get his drugs from Paroutian and Graziani, and Sansone was able to get his drugs on occasions from Catroni, and you and Sansone were in the narcotic business together, you must have some knowledge of Sansone's sources of supply. Who are they? A. I refuse to answer on the same grounds.

Q. Since Paroutian has been back in the United States and in prison, have you had any contact with him? A. I refuse to answer on the same grounds.

Q. When Paroutian and Graziani were here in the United States the moneys which they received for the narcotics that they supplied to people in the Southern District of New York were deposited in Swiss banks through Swiss bank representatives here in New York. What do you know about that? A. I refuse to answer on the same grounds.

Q. Are you aware of the fact that Paroutian and Graziani kept an apartment out at Kew Gardens? A. I refuse to answer on the same grounds.

*Government Exhibit 5, Transcript of Grand Jury
Proceedings on July 2, 1964*

Q. Do you know that they concealed substantial quantities of narcotic drugs in this apartment? A. I refuse to answer on the same grounds.

Q. During the period of their tenancy in this apartment Paroutian and Graziani left temporarily for Europe through Canada. While they were absent from the apartment a Canadian named Peter Stepanoff came into the apartment and took 17 kilograms of heroin out of it. What do you know about that? A. I refuse to answer on the same grounds.

Q. Do you know anything about it? A. I refuse to answer on the same grounds.

Q. Isn't it a fact that Stepanoff stole that amount of drugs out of the apartment? A. I refuse to answer on the same grounds.

Q. If he didn't steal them how much money did he pay Paroutian and Graziani for them? A. I refuse to answer on the same grounds.

Q. There was a government informant in that case named Angelo Sonessa. Did you ever hear of him? A. I refuse to answer on the same grounds.

Q. In or about October of 1960 Sonessa was murdered because of his informing to the government. Who killed him? A. I refuse to answer on the same grounds.

Q. Where is his body? A. I refuse to answer on the same grounds.

Q. Did you know Sonessa's partner Joe Vecchio? A. I refuse to answer on the same grounds.

Q. While Vecchio was under indictment for violating the narcotic laws in this district he was killed in an automobile accident under rather mysterious circum-

*Government Exhibit 5, Transcript of Grand Jury
Proceedings on July 3, 1964*

stances. What do you know about that? A. I refuse to answer on the same grounds.

Q. Did you ever hear of a person named Phil Rostelli? A. I refuse to answer on the same grounds.

Q. How long was Rostelli acting as a courier for Ca-troni? A. I refuse to answer on the same grounds.

Q. Where is Rostelli now? A. I refuse to answer on the same grounds.

Mr. Tendy: Will you step outside.

Witness leaves room.

folld by R.S.K.

SALVATORE SHILLITANI, recalled:

Mr. Tendy: Mr. Foreman, would you direct this witness, please, to return on Tuesday, the 14th of July, at ten in the morning?

Foreman: You are directed to return on Tuesday, July 14th, at ten A.M., same room.

Witness: All right; thank you.

Mr. Tendy: Thank you, sir.

(Witness leaves room.)

**Government Exhibit 6, Transcript of Grand Jury
Proceedings on August 4, 1964**

Sept. Sp.

August 4, 1964.

Re: John Doe

Mr. Lawler; Mr. McEvoy

SALVATORE SHILLITANI, having been duly sworn by the Foreman, testified as follows:

By Mr. Lawler:

Q. Would you state your name, please? A. Salvatore Shillitani.

Q. Mr. Shillitani, you recall on July 1st you were brought before Judge Wyatt, down in Room 318. At that time, the government made application to grant you immunity, and asked Judge Wyatt to order you to answer certain questions? A. I do.

Q. At that time, you were granted immunity, and the judge asked you to answer certain specific questions. I now intend to ask you those questions, Mr. Shillitani. Do you work? A. I refuse to answer on the grounds it may incriminate me.

Q. Mr. Shillitani, you aren't employed by anybody at all? A. I refuse to answer on the grounds it might tend to incriminate me.

Q. How well do you know Matty Ianello? A. I refuse to answer on the grounds it may incriminate me.

Q. You have a nickname, "Sally Shields"? Right? A. I refuse to answer on the grounds it may incriminate me.

Q. Do you have any interest at all in a night club?

*Government Exhibit 6, Transcript of Grand Jury
Proceedings on August 4, 1964*

A. I refuse to answer on the grounds it may tend to incriminate me.

Q. Do you have any interest in any business? A. I refuse to answer on the grounds it may incriminate me.

Q. Do you have a job? A. I refuse to answer on the same grounds.

Q. Are you in business? A. I refuse to answer on the same grounds.

Q. So that you'll understand the purpose of this Grand Jury proceeding, let me tell you this: there has been testimony before a senate committee, and statements made to federal law enforcement agencies, that a person named Thomas Lucchese is the head of a group of individuals who are in a number of illegal activities. It's also been alleged that one of the activities that members of this group participate in is the illegal or illicit narcotics traffic. It's also been alleged that you are or were a member of this group. True, or false? A. I refuse to answer on the grounds it may incriminate me.

Q. Do you know Thomas Lucchese? A. I refuse to answer on the same grounds.

Q. Do you know a person by the name of John Dioguardi? A. I refuse to answer on the same grounds.

Q. Do you know a person named John Ormento? A. I refuse to answer on the grounds it may incriminate me.

Q. Do you know a person named Salvatore Santoro? A. I refuse to answer on the same grounds.

Q. Do you know a person named Angelo Tuminaro? A. I refuse to answer on the same grounds.

Q. Do you know a person named Salvatore LoProto? A. I refuse to answer on the grounds it may incriminate me.

*Government Exhibit 6, Transcript of Grand Jury
Proceedings on August 4, 1964*

Q. Do you know a person named Vincent Rao? A. I refuse to answer on the grounds it may incriminate me.

Q. Are you involved in the illicit narcotics traffic? A. I refuse to answer on the same grounds.

Q. Do you have an income? A. I refuse to answer on the same grounds.

Q. If you have an income, is any of it derived from your participation in the illicit narcotics traffic? A. I refuse to answer on the same ground.

Q. Do you know of anyone who is involved in the illicit narcotics traffic? A. I refuse to answer on the same ground.

Q. Do you know whether or not anyone is—? A. I refuse to answer on the same grounds.

Q. I'm sorry; I read that question incorrectly: do you know whether anyone who was affiliated with Thomas Lucchese is in fact involved in the illicit narcotics traffic? A. I refuse to answer on the grounds it may incriminate me.

Q. Back in 1951, you were convicted with a person named Francois Spirito and a person named Carmelo Sansone for violation of the federal narcotics laws. At that time, you received a sentence of fifteen years. From whom did you get the narcotics that resulted in that conviction? A. I refuse to answer on the same grounds.

Q. How long had you been dealing with the person from whom you got the narcotics? A. I refuse to answer on the same grounds.

Q. When did you first start to deal in narcotics? A. I refuse to answer on the same grounds.

Q. Whom did you first deal with? A. I refuse to answer on the same grounds.

*Government Exhibit 6, Transcript of Grand Jury
Proceedings on August 4, 1964*

Q. When did you first go into the narcotics business with Francois Spirito and Carmelo Sansone? A. I refuse to answer on the grounds it may incriminate me.

Q. The amounts of narcotics in that particular indictment seemed to strongly suggest that the person you were in contact with had an overseas contact for narcotic drugs. Who was that person? A. I refuse to answer on the grounds it may incriminate me.

Q. The narcotics that were the subject of that particular indictment, were they pure narcotics or had they been cut? A. I refuse to answer on the same grounds.

Q. Whom did you pay for them? A. I refuse to answer on the same grounds.

Q. You were released in 1960, but you returned to prison in 1961 for violation of the parole. At that time, Sansone was again convicted of violating the federal narcotics laws. At the time of his second conviction, did you have any contact with him? A. I refuse to answer on the same grounds.

Q. When Sansone was convicted the second time, he had a co-defendant named Pottofoco? A. I refuse to answer on the same grounds.

Q. Sansone was pretty closely connected with a notorious Canadian violator named Guiseppe Catroni, and in fact, on occasions, received his narcotics from Catroni. Did you ever hear of Catroni? A. I refuse to answer on the same grounds.

Q. Did Sansone ever discuss him with you? A. I refuse to answer on the same grounds.

Q. Will you tell this Grand Jury anything you know about Sansone's overseas connections for narcotics? A. I refuse to answer on the grounds it may incriminate me.

*Government Exhibit 6, Transcript of Grand Jury
Proceedings on August 4, 1964*

Q. Did you ever hear of Antronuk Paroutian? A. I refuse to answer on the same grounds.

Q. It's been established in this district that you acquired a Frenchman as a partner whose name is Gabriel Graziano: did you ever hear of him? A. I refuse to answer on the same grounds.

Q. Well, if Catroni is able to get his drugs from Paroutian, and Sansone was able to get his drugs from Catroni, and you and Sansone were in the narcotics business together, you must have some knowledge of the sources of supply? Who are they? A. I refuse to answer on the same grounds.

Q. Since Sansone has been back from prison, have you had any contact with him? A. I refuse to answer on the same grounds.

Q. When Paroutian and Catroni were here in the United States, the moneys that they received for narcotics from people in the southern district of New York were deposited in Swiss banks through Swiss bank representatives here in New York. What do you know about that? A. I refuse to answer on the same grounds.

Q. Are you aware of the fact that Paroutian and Graziani kept an apartment out in Kew Gardens? A. I refuse to answer on the same grounds.

Q. Do you know that they concealed quantities of narcotic drugs in this apartment? A. I refuse to answer on the grounds it may incriminate me.

Q. During the period of their tenancy in this apartment, Paroutian and Graziano left temporarily for Europe through Canada. While they were absent from the

*Government Exhibit 6, Transcript of Grand Jury
Proceedings on August 4, 1964*

apartment, a Canadian named Peter Stepanoff came into the apartment and took seventeen kilograms of heroin out of the apartment. What do you know about that?

A. I refuse to answer on the same grounds.

Q. Do you know anything about it? A. I refuse to answer on the same grounds.

Q. Isn't it a fact that Stepanoff stole the drugs out of that apartment? A. I refuse to answer on the same grounds.

Q. Well, if he didn't steal them, how much money did he pay Paroutian and Graziani for them? A. I refuse to answer on the grounds it may incriminate me.

Q. There was a government informant in that case, named Sonessa, Angelo Sonessa. What do you know about him? A. I refuse to answer on the same grounds.

Q. In or about October of 1960, Sonessa was murdered because of his informing to the government. Who killed him? A. I refuse to answer on the same grounds.

Q. Where is his body? A. I refuse to answer on the same grounds.

Q. Did you know Sonessa's partner—? A. I refuse to answer on the same grounds.

Q. —Joe Vecchio? A. I refuse to answer on the same grounds.

Q. While Vecchio was under indictment for violating narcotics laws in this district, he was killed in an automobile accident under rather mysterious circumstances. What do you know about that? A. I refuse to answer on the same grounds.

Q. Did you ever hear of a person named Phil Rostelli? A. I refuse to answer on the same grounds.

*Government Exhibit 6, Transcript of Grand Jury
Proceedings on August 4, 1964*

Q. How long was Rostelli acting as a courier between Catroni and the Canadian narcotics racket? A. I refuse to answer on the grounds it may incriminate me.

Q. Where is Rostelli now? A. I refuse to answer on the same grounds.

Q. Mr. Shillitani, would you step outside, please?

(Witness leaves room.)

**Transcript of Proceedings before the Honorable Lloyd
F. MacMahon, District Judge, on August 4, 1964**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of
Grand Jury Investigation

SALVATORE SHILLATANI

Before:

HON. LLOYD F. MACMAHON, *District Judge.*

New York, August 4, 1964
1:40 p.m.

APPEARANCES:

ROBERT M. MORGENTHAU, Esq.,
United States Attorney,
For the Government,

ANDREW M. LAWLER, JR., Esq., and
ANDREW T. McEVoy, JR., Esq.,
Assistant United States Attorneys.

STANLEY L. SIEGEL, Esq.,
Attorney for witness Salvatore Shillatani.

Mr. Lawler: Your Honor, at this time the government seeks the aid of the Court. The fact that the witness——

The Court: Let us see who is here first. Is Shillatani here?

*Transcript of Proceedings before the Honorable
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Mr. Siegel: Yes, sir.

The Court: Is he represented?

Mr. Siegel: Yes, sir.

The Court: Who are you?

Mr. Siegel: Stanley L. Siegel, 280 Broadway,
New York.

The Court: All right.

Mr. Lawler: Your Honor, the witness Shillatani was subpoenaed to appear before the federal grand jury. He appeared on three separate occasions and on each occasion he exercised his rights under the Fifth Amendment.

On July 1st the United States made an application to Judge Wyatt under the provisions of Section 1406, Title 18, the narcotics immunity section, to have the defendant ordered to answer certain questions. On that date Judge Wyatt ordered the witness Shillatani to answer specific questions, immunity having been conferred and Judge Wyatt having explained to the witness that he has full and complete immunity and that he could no longer exercise his rights under the Fifth Amendment.

Thereafter on July 2nd the witness Salvatore Shillatani was called before this grand jury. He again refused to answer the specific questions which he was ordered to answer, again exercising his rights under the Fifth Amendment.

Again this morning the witness Shillatani appeared before the federal grand jury. He was asked the same questions which he had been previously ordered to answer, and again he refused to answer.

*Transcript of Proceedings before the Honorable
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At this time the government's position is that the witness Shillatani has committed a contempt of court and would request that a hearing be set down, brought on by an order to show cause, as to why Salvatore Shillatani should not be held in contempt of court.

This is subject, of course, to any additional proceedings which your Honor might wish to have at this time.

Mr. Siegel: May I be heard, your Honor?

My understanding of the facts differs basically from those recited by the United States Attorney.

On July 1st Mr. Shillatani was brought before Judge Wyatt, at which time Mr. Shillatani asked for the right to be represented by counsel and advised by counsel. Judge Wyatt did adjourn the case until the next day.

The information I had was to the effect that on that particular day no questions were asked by Judge Wyatt with regard to the proceedings before the grand jury and no questions were asked of Mr. Shillatani.

On the next day I appeared in court here for the purpose of advising my client, at which time I was advised that the case had been adjourned again by the United States Attorney.

We were before the grand jury today and at this time we are before the Court.

At this stage of the proceedings I have no knowledge of the questions to which the United States Attorney wants answers. I am not in a position to advise my client as to these particular questions.

*Transcript of Proceedings before the Honorable
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I request that the Court order the United States Attorney to give me a copy of the questions that they seek answers to and adjourn this matter so that I can have time to consult with my client.

The Court: Do you have the questions with you?

Mr. Lawler: Yes, I do. I have a transcript of the record before Judge Wyatt and the questions which were read to the witness.

The Court: Just point them out to me.

Mr. Lawler: Your Honor, Judge Wyatt asked them one at a time.

The Court: Do you have a copy of these to make available to counsel?

Mr. Lawler: Yes, I will make a copy available to counsel.

The Court: Will you do so now, please. Mark them as Court's Exhibit A.

(Marked Court's Exhibit A.)

Mr. Lawler: May the record reflect that defense counsel has been furnished with a copy of Court's Exhibit A.

(Pause.)

Mr. Siegel: Your Honor, I have briefly gone over the content of the testimony.

The Court: Let the record reflect that you have had them for fifteen minutes.

Mr. Siegel: Your Honor, may the record also reflect that it is quite lengthy.

The Court: No, it is not.

*Transcript of Proceedings before the Honorable
Lloyd F. MacMahon, District Judge, on August 4, 1964*

Mr. Siegel: Your Honor, what I would like to do is ask the Court for a comparatively short adjournment so that I may be in a position to advise my client as to the contents herein and the legal ramifications, et cetera. This is the first occasion that I have become acquainted with these questions. Until this time I had no knowledge of them. I don't think the grand jury's investigation would be hampered one iota by granting this adjournment.

The Court: Well, you are getting an inspection at this time, counsel, really, to advise your client as to whether or not he should answer them.

Mr. Siegel: I think——

The Court: This is not a proceeding to punish him for contempt per se.

Mr. Siegel: I understand that, your Honor. The thing is, on the basis of a fifteen minutes' perusal of a lengthy record I feel in terms of integrity——

The Court: The record is not lengthy and don't characterize it as such; but I think a reasonable adjournment is in order. We will adjourn it until three o'clock, and that will give you ample time to read the questions and advise your client with respect to whether or not he should answer them.

(Adjourned to 3:00 p. m.)

(3:15 p. m.)

Mr. Lawler: Your Honor, this, as you know, is a continuation of the proceeding which we had this morning.

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Mr. Siegel: Your Honor, I would like to make a brief statement, if I may.

My personal feeling is that my client is entitled to the best that I can possibly give him. As a matter of professional integrity, I feel most strongly about this.

I have gone over the questions and I feel that there may be more involved in these questions than is known to me at this particular time. I have advised my client that on the basis of an hour in going over these questions I could not, with due regard to my own feelings on the subject, advise him on this particular matter, and any decision which he would have to make would have to be on his own.

The Court: Well, the Court instructs him that he must answer. He has been given full immunity from prosecution, both state and federal, and I advise him that he must answer, and instruct him that he must answer, and direct him to answer, and I now notify him that he will be cited for contempt of court, and I notify him that we will hold a hearing for that purpose to determine whether or not he has been guilty of contempt for his refusal to answer despite immunity, and that I will hold a meeting on Friday morning at 11:30 in this courtroom, room 318.

At that time he will have an opportunity to put in any defense he has, to be represented by counsel, and we will have a full hearing on this subject on whether or not he should be adjudged in contempt

*Transcript of Proceedings before the Honorable
Lloyd F. MacMahon, District Judge, on August 4, 1964*

of court or in contempt of an arm of the court, the grand jury.

Mr. Siegel: Your Honor—

The Court: I direct the United States Attorney to prepare forthwith an order to show cause and to serve it upon the witness so that it will confirm the order of the court.

Mr. Siegel: Your Honor, may I ask one indulgence on the part of the Court?

On Friday the 7th I have a commitment before the Criminal Court, Part III, involving approximately seven defendants, and if my recollection serves me correctly, that case has been marked final against me, so may I ask the Court's indulgence for—Monday would be fine.

Mr. Lawler: May I suggest Thursday, your Honor?

The Court: How is Thursday? This Court is in the Civil Motion Part all of next week and we have a few things to do here.

Mr. Siegel: Yes, sir, I can appreciate that, your Honor. Unfortunately I am a single practitioner.

The Court: So am I.

Mr. Siegel: It would be most appreciated if this could just be put over until Monday.

The Court: I can't do it Monday. I have to be in court all day Monday on other matters as well.

Mr. Siegel: The reason why I—

The Court: I would be glad to do it Thursday afternoon.

Mr. Siegel: This is the reason, your Honor. Wednesday morning I am scheduled to leave for

*Transcript of Proceedings before the Honorable
Lloyd F. MacMahon, District Judge, on August 4, 1964*

Norwich, Connecticut, on a case involving a kidnapping charge. How long I will be there I don't know. It may be over in a day and it may take two days, and this is the problem that I am faced with.

The Court: Well, something has to give in this matter. We can't keep the grand jury waiting to suit your convenience.

Mr. Siegel: I can appreciate that.

The Court: I am perfectly willing to move it up and I can hold it either tomorrow or Thursday.

Mr. Siegel: Tomorrow is the day that I am scheduled to leave for Norwich, your Honor. Any day thereafter would certainly be agreeable.

The Court: What is this matter that you have on Friday?

Mr. Siegel: On Friday I have a case involving the violation of the Sullivan law, in which I think there are approximately seven or eight defendants.

The Court: Is the case up for trial?

Mr. Siegel: Yes, sir.

The Court: Well, that won't be tried in one day if it involves seven or eight defendants, would it?

Mr. Siegel: Well, I think the issues are fairly simple and it should not be more than one day.

The Court: What time do you plan to leave for Norwich?

Mr. Siegel: I plan to leave at seven-thirty in the morning. I have been informed that it takes approximately two and a half hours.

The Court: What are you doing on Thursday?

Mr. Siegel: Well, that is the problem, your

*Transcript of Proceedings before the Honorable
Lloyd F. MacMahon, District Judge, on August 4, 1964*

Honor. I don't know how long the case in Norwich may take. It may just take one day.

The Court: What is it, a trial?

Mr. Siegel: Yes, sir. It may take one day or it may take two. I honestly don't know.

The Court: Well, this is something that will have to be tried before me and not before any other judge. I think you should have a fair opportunity to put in any defense that you have. Can you be here Monday morning at ten o'clock?

Mr. Siegel: Yes, sir.

The Court: All right, I will hear it at ten o'clock in room 506.

(Adjournment taken to August 6, 1964, at 10:00 a. m.)

**Transcript of Contempt Proceeding Held before the
Honorable Lloyd F. MacMahon, District Judge, on
August 10, 1964**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

64 Cr. 715

UNITED STATES OF AMERICA,

vs.

SALVATORE SHILLITANI,

Defendant.

Before:

HON. LLOYD F. MACMAHON, *District Judge.*

New York, August 10, 1964;
10 o'clock a.m.

APPEARANCES:

ROBERT M. MORGENTHAU, Esq.,
United States Attorney,
for the government;

By ANDREW M. LAWLER, Esq., and
ANDREW T. McEVoy, Esq.,
Assistant United States Attorneys.

STANLEY L. SIEGEL, Esq.,
Attorney for defendant.

*Transcript of Contempt Proceeding Held before the
Honorable Lloyd F. MacMahon, District Judge, on
August 10, 1964*

The Clerk: Salvatore Shillitani versus the United States of America.

Is the government ready?

Mr. Lawler: The government is ready, your Honor.

Mr. Siegel: The defendant is ready, your Honor.

The Court: Let the record reflect that we are holding this hearing in open court.

The Court will say that I have to adjourn at ten-thirty for a few minutes because I have a naturalization proceeding on. We will adjourn for about a half hour at ten-thirty.

Proceed.

Mr. Lawler: As your Honor knows, this hearing was set down for today and was brought on by an order to show cause, the defendant Salvatore Shillitani should show cause why he should not be punished for contempt of this Court.

Unless your Honor wishes any additional opening statement, the government is ready to go forward at this time.

The Court: Go forward with your proof.

Mr. Lawler: May I have this marked Government's Exhibit 1, please.

(Government's Exhibit 1 marked for identification.)

Mr. Lawler: Your Honor, I have spoken with Mr. Shillitani's attorney, Mr. Siegel, and he is willing to stipulate that on February 4th the witness

*Transcript of Contempt Proceeding Held before the
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August 10, 1964*

or defendant Shillitani was served with a grand jury subpoena at his home.

At this time I would offer that grand jury subpoena in evidence.

Mr. Siegal: Conceded.

The Court: Received.

(Government's Exhibit 1 for identification received in evidence.)

Mr. Lawler: The government calls Mr. Atkins.

ERNEST W. ATKINS, called as a witness by the government, being first duly sworn, testified as follows:

Direct examination by Mr. Lawler:

Q. Are you a member of a grand jury presently sitting in this district? A. I am, yes.

Q. When was that grand jury impaneled? A. September, 1963.

Q. Was an individual by the name of Salvatore Shillitani called to testify before that grand jury? A. He was.

Q. Do you see Mr. Shillitani in the courtroom? A. Yes.

Q. Will you point him out, please. A. He is the gentleman beside Mr. Siegel with the glasses.

Q. To the left of Mr. Siegel? A. That's right.

Mr. Lawler: May the record reflect the witness has properly identified the defendant Shillitani?

The Court: Yes.

*Transcript of Contempt Proceeding Held before the
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Q. Mr. Atkins, on these appearances before the grand jury did Mr. Shillitani answer questions? A. No, outside perhaps his address, but generally not the questions you wanted.

The Court: Well, did he appear before the grand jury?

Mr. Lawler: I asked that.

The Court: I don't believe you did.

Q. Did Mr. Shillitani appear before the grand jury? A. He did.

Q. On a number of occasions? A. Three, as I recall.

The Court: When were they?

The Witness: February 12th I believe was one date.

Q. Was that of 1964? A. 1964.

Q. What were the other dates?

Mr. Lawler: He appeared——

The Witness: I don't recall the other dates.

The Court: Perhaps the assistant has something that could refresh your recollection.

Q. Mr. Atkins, I show you copies of grand jury minutes which have the dates, and ask you to look at these. Would these refresh your recollection as to the dates upon which Mr. Shillitani appeared? A. They do, yes.

*Transcript of Contempt Proceeding Held before the
Honorable Lloyd F. MacMahon, District Judge, on
August 10, 1964*

Q. Will you tell us those dates, please. A. The first one is February 12th, 1964 and the second April 22, 1964. The third, May 6, 1964.

Q. And on those occasions——

The Court: Were there any other occasions on which he appeared?

Mr. Lawler: Yes, your Honor. I will go into that in a second.

The Court: No, I want you to establish the occasions on which he appeared. I think I have made that clear, haven't I?

Mr. Lawler: Yes, your Honor.

Q. Mr. Atkins, I show you additional grand jury minutes and I ask you whether these refresh your recollection as to other occasions upon which Mr. Shillitani appeared before the grand jury. A. July 2nd, 1964, yes, and August 4th, 1964.

Q. And were you present, in addition to these grand jury appearances——

The Court: Just a moment. Are those the only occasions on which he appeared?

Mr. Lawler: Before the grand jury. There is only one other occasion in which he appeared before the Court in the presence of the grand jury, your Honor.

The Court: What date was that?

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Q. Do you remember the date on which Mr. Shillitani appeared before the grand jury in the presence of the Court? A. I believe that was August 4th, yes.

Q. Well, was there another occasion on which he appeared? Do you remember an occasion upon which a judge in the 318 part, Judge Wyatt, instructed the witness— A. I do.

Mr. Siegel: Your Honor, I object to the United States Attorney leading the witness.

The Court: Oh, it is preliminary. I will allow it. There is no jury here.

Q. I show you the transcript of that hearing. Does that refresh your recollection? A. Yes; July 1st.

The Court: All right.

Q. Mr. Atkins, on the first three appearances before the grand jury—February 12th, April 22nd and the May 6th appearance—did the witness Shillitani answer the questions put to him by the assistant United States Attorney? A. He did not answer these that he was later instructed to answer.

Q. Did he answer the questions? A. He answered some, but generally not.

Q. And did he state the reason why he did not answer those questions? A. He said—he refused to answer because of self—the possibility of self-incrimination on the Fifth Amendment.

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Q. Do you remember— A. I believe he may have also quoted some other amendment but the Fifth is the principal one.

Q. Mr. Atkins, do you remember on July 1st, 19—

The Court: Well, I have got to have that clear. Did he take the Fifth Amendment or did he take some other one? The witness is not clear on it.

Q. Mr. Atkins, do you remember whether the witness invoked the Fifth Amendment? A. He did invoke the Fifth, yes.

Q. And, in addition, you think he might have invoked another amendment? A. He may have. I don't recall.

Q. Do you remember specifically his invoking the Fifth Amendment? A. Yes.

Q. Mr. Atkins, were you present in courtroom 318 on July 1st, 1964, when Judge Wyatt instructed the witness to answer certain questions? A. I was, yes, sir.

The Court: Just a moment. Was there an application made to Judge Wyatt, and, if so, when was it made?

I wish you would take this in chronological order, establish his appearance, his refusals to answer and when the proceedings took place.

Mr. Lawler: Your Honor, I also intend to put all these papers into evidence.

The Court: I am sure you do, but I want it clear. I don't want a mess left on my doorstep to clean up. Straighten it out now, as you go along.

Mr. Lawler: Yes, your Honor.

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Q. Were you present in court on July 1st, 1964 when the Assistant United States Attorney Mr. Tendy and myself made application to the Court to have the witness instructed to answer certain questions? A. I was, yes, sir.

Q. And were you also present when Judge Wyatt instructed the witness to answer those questions? A. Yes, sir.

Q. And did the witness thereafter appear before the same grand jury on July 2nd, 1964 and August 4th, 1964? A. He did, yes, sir.

Q. And did he answer the questions which he was instructed to answer? A. He did not.

The Court: Was Mr. Shillitani present in the courtroom when the judge instructed him to answer the questions?

The Witness: Yes, sir.

The Court: And was the whole grand jury there?

The Witness: Well, the quorum.

The Court: All right.

Mr. Lawler: I have no further questions of this witness, your Honor.

The Court: Cross-examine.

Mr. Siegel: No questions.

The Court: You may step down.

(Witness excused.)

Mr. Lawler: Your Honor, at this time I have two envelopes ordered sealed by the Court, one by Judge Wyatt and one by your Honor.

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I ask that they be opened at this time.

The Court: Open it, please.

Which is which? Let us identify them.

Mr. Lawler: May I have both of them marked.

(Government's Exhibit 2 marked for identification.)

(Government's Exhibit 3 marked for identification.)

Mr. Lawler: Your Honor, may the record reflect that Government's Exhibit 2 is entitled "Grand Jury Matter in Re Salvatore Shillitani" and it is marked "Ordered sealed by the Court, dated July 2nd, 1964."

The Court: Is that the one Judge Wyatt—

Mr. Lawler: It is the one Judge Wyatt ordered sealed.

The Court: All right.

Mr. Lawler: Government's Exhibit 3 also reads "Grand Jury Matter in Re Salvatore Shillitani." It is dated August 4, 1964, ordered sealed by the Court, MacMahon, J."

May the record further reflect I am removing from Government's Exhibit 2 certain documents. the first of which is an affidavit of Robert M. Morgenthau, United States Attorney.

Attached thereto is a letter from Mr. Robert Kennedy, the Attorney General.

I would ask that both of these be marked Government's Exhibit—

The Court: Take the same exhibit number. Is it 2?

Mr. Lawler: 2.

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The Court: All right. Label them 2-A and 2-B.

(Government's Exhibits 2-A and 2-B marked for identification.)

Mr. Lawler: At this time, your Honor, the government offers Government's Exhibits 2-A and 2-B in evidence.

For purposes of clarity, your Honor, I also offer the envelope at this time.

The Court: All right.

(Government's Exhibits 2-A and 2-B for identification received in evidence.)

Mr. Lawler: Also in that same envelope are three transcripts of grand jury proceedings dated February 12, 1964, April 22nd, 1964 and May 6, 1964.

The Court: Mark them 2-C, D and 2-E.

(Government's Exhibits 2-C, 2-D and 2-E marked for identification.)

Mr. Lawler: Your Honor, again I have spoken with Mr. Siegel and he has agreed to stipulate that these transcripts are a true and accurate reproduction and that there is no need to call the grand jury stenographers so to testify.

Mr. Siegel: So stipulated.

The Court: Thank you.

(Pause.)

The Court: Any objection, Mr. Siegel?

Mr. Siegel: No, your Honor.

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The Court: Received.

(Government's Exhibits 2-C, 2-D and 2-E for identification received in evidence.)

Mr. Lawler: Mark this Government's Exhibit, please.

(Government's Exhibit 4 marked for identification.)

Mr. Lawler: Your Honor, Government's Exhibit 4 marked for identification is the July 1st proceeding before Judge Wyatt in room 318. I believe Mr. Siegel will also make the same concession.

Mr. Siegel: So stipulated.

(Pause.)

The Court: No objection?

Mr. Siegel: No objection.

The Court: Received.

(Government's Exhibit 4 for identification received in evidence.)

Mr. Lawler: May I have this marked as a government's exhibit?

(Government's Exhibit 5 marked for identification.)

Mr. Lawler: Your Honor, Government's Exhibit 5 marked for identification is the July 2nd appearance of Salvatore Shillitani before the grand jury. I believe Mr. Siegel will again make the same concession.

(Pause.)

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The Court: No objection?

Mr. Siegel: No objection, your Honor.

The Court: Received.

(Government's Exhibit 5 for identification received in evidence.)

Mr. Lawler: Mark this as a government's exhibit, please.

(Government's Exhibit 6 for identification received in evidence.)

Mr. Lawler: Finally, your Honor, Government's Exhibit 6 marked for identification is the August 4th appearance of the witness Salvatore Shillitani before the grand jury.

I believe once again Mr. Siegel will make the same stipulation.

Mr. Siegel: So stipulated.

(Government's Exhibit 6 for identification received in evidence.)

Mr. Lawler: Your Honor, what has been marked Government's Exhibit 3 for identification is the sealed envelope, ordered sealed by your Honor.

Removing therefrom what has previously been marked Court's Exhibit A, which was a transcript of the July 1st grand jury proceedings, including the questions the witness was ordered to answer—

The Court: It will now become 3-A.

(Government's Exhibit 3-A marked for identification.)

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Mr. Lawler: At this time the government would offer Government's Exhibit 3 and Government's Exhibit 3-A in evidence.

The Court: Received.

(Government's Exhibits 3 and 3-A for identification received in evidence.)

Mr. Lawler: Your Honor, that constitutes the government's direct case.

The Court: Does the government rest?

Mr. Lawler: Yes, it does, your Honor.

Mr. Siegel: Your Honor, at this time defendant moves to dismiss the government's case on the grounds that it failed to prove a prima facie case.

The Court: Denied.

Mr. Siegel: Defendant rests.

At this time defendant moves to dismiss on the grounds that as a matter of law and fact, on the basis of all the records before the Court at this time, the government has failed to show that there has been any contempt of the order set forth by Judge Wyatt on—I think that was July 1st, and of your Honor's order on July 4th—on August 4th, I am sorry.

The Court: Denied.

We will take a short recess and the Court will make its findings about 11 o'clock.

(Short recess, at 10.25 a.m.)

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(Hearing resumed at 11.00 o'clock a.m.)

The Court: Would you mark this order to show cause Court's Exhibit A.

(Marked Court's Exhibit A for identification.)

The Court: The Court having considered the evidence and the documents, the testimony, now finds as follows:

Notice of this hearing was given by me in open court on August 4, 1964 in the presence of Salvatore Shillitani and also by order to show cause signed by me on August 5, 1964, and served the same day on counsel for Mr. Shillitani.

A grand jury was duly impaneled for this district in September, 1963, and subsequently began an investigation into possible violations of the federal narcotic laws, which are referred to in Title 18, United States Code, Section 1406, and was engaged in such investigation on February 12, 1964, May 6, 1964, July 1, 1964, July 2, 1964, and August 4, 1964.

In pursuance of such investigation Salvatore Shillitani was duly subpoenaed to appear and testify before the grand jury by a valid subpoena dated February 3rd, 1964, and served on Mr. Shillitani on February the 4th, 1964.

Pursuant to said subpoena, Salvatore Shillitani did appear and testify before the grand jury on February 12, 1964, April 22, 1964, and May 6, 1964.

On July 1, 1964, application was made to this Court before Judge Wyatt to compel Salvatore Shillitani to answer certain questions relating to the matter under investigation by the grand jury, which Mr. Shillitani had

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refused to answer before the grand jury on the ground that his answers might tend to incriminate him.

In the presence of Mr. Shillitani and the grand jury, oral and written application was made by the United States Attorney to Judge Wyatt under the provisions of Title 18, United States Code, Section 1406, to instruct the witness to testify.


The written application consisted of an affidavit of the United States Attorney and the written approval of the Attorney General.

After considering the matter Judge Wyatt found that the United States Attorney had complied with the provisions of Title 18, United States Code, Section 1406, and was entitled to have the Court instruct the witness to testify and produce evidence before the grand jury.

On July 1, Judge Wyatt explained to Salvatore Shillitani that full and absolute immunity from federal and state prosecution would be granted to him with respect to all matters on which he might be compelled to testify.

Judge Wyatt then considered the specific questions which were the subject of the application and which are set forth in the grand jury minutes of July 1, 1964, marked here as Court's Exhibit 4, and directed Salvatore Shillitani to appear before the grand jury on the following day and answer each and every one of the questions and directed that the papers which had been submitted to him on the hearing of July 1 be sealed.

The questions which Mr. Shillitani refused to answer before the grand jury were material and pertinent to



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the investigation then being made, and the refusal of Mr. Shillitani to answer them obstructed and hindered the grand jury in its investigation.

All steps were properly taken under the provisions of Title 18, United States Code, Section 1406, so that when Judge Wyatt ordered Mr. Shillitani to answer the questions, Mr. Shillitani was then absolutely immune from prosecution, or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which Judge Wyatt ordered him to testify.

On July 2, 1964 Salvatore Shillitani appeared before the same grand jury and was asked all the questions which Judge Wyatt had directed him to answer, but he then and there wilfully refused to answer any of them.

On August 4, 1964 Salvatore Shillitani again appeared before the grand jury and was again asked all the same questions and again wilfully refused to answer any of them.

On August 4, 1964 Salvatore Shillitani was presented to me as a judge of this Court by the grand jury in open court and the assistance of the Court was sought with respect to the same questions which Judge Wyatt had directed Shillitani to answer.

At that time I advised Mr. Shillitani that he was required to answer the questions and gave notice to him of this hearing on a charge of criminal contempt and thereafter signed the order to show cause referred to earlier.

On this hearing this morning, the United States submitted evidence, and full opportunity was given to the defendant Shillitani to present evidence.

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He was represented by counsel, but he offered no evidence.

On the basis of the foregoing I find Salvatore Shillitani guilty of criminal contempt of court for his wilfull disobedience of a lawful order of this Court on July 2, 1964 and on August 4, 1964 before the grand jury in that he wilfully refused to answer questions which he had been lawfully ordered to answer by this Court.

Are you ready for sentence?

Mr. Lawler: May the government be heard on sentencing, your Honor?

The Court: Is the defendant ready for sentence?

Mr. Siegel: Yes, sir.

Mr. Lawler: Your Honor, with respect to the defendant's criminal record, in 1925 he was convicted of third degree robbery and he was sentenced from two to six years in the state penitentiary.

Thereafter, he was returned to prison twice for violations of his parole.

In 1932 he was arrested and charged with homicide with a gun.

The record isn't clear whether there was a plea or a trial and conviction.

In any event, he was convicted of manslaughter in the first degree and sentenced to twenty years.

In 1951, in this court, the defendant was indicted for violation of the federal narcotics act and also for violation of the conspiracy laws.

He pled guilty before Judge Weinfeld, and Judge Weinfeld imposed a sentence of fifteen years on the defendant.

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He has also been identified in testimony before a Senate subcommittee as a member of the Luchese mob, and an active member of that mob.

As such he would have intimate knowledge of the workings of that organization which the grand jury was inquiring into at the time he was subpoenaed to appear before the grand jury.

I might also add that by his refusal to testify and give evidence after he was granted immunity, he has frustrated the activities of this grand jury and the grand jury has not been able to move along as they wished, as they could have.

The government has nothing further to add.

The Court: Do you wish to be heard, Mr. Siegel?

Mr. Siegel: Your Honor, the defendant is ready for sentencing.

I think, as I said before to the Court, in my estimation, at least, my client has not committed a crime of criminal contempt, but this is beside the point. He is ready for sentencing now, your Honor.

The Court: Do you have anything to say in your own behalf, Shillitani?

Will you rise, please, before the Court pronounces sentence upon you.

Defendant: No, sir.

The Court: You may sit down.

When does the grand jury finish? What is the term?

Mr. Lawler: Your Honor, they were impaneled in September of 1963. They have left eighteen months. The grand jury would expire in early 1965.

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The Court: The Court will take a short recess. I want to think about this.

(Short recess.)

Mr. Siegel: I apologize for keeping the Court waiting, your Honor.

The Clerk: Please be seated.

The Court: Mr. Shillitani, would you rise, please.

I want to make it clear that the sentence of the Court is not intended so much by way of punishment as it is intended solely to secure for the grand jury answers to the questions that have been asked of you.

The sentence of the Court is that having found that Mr. Salvatore Shillitani is guilty of criminal contempt in that he wilfully disobeyed the lawful order of this Court by his refusal to answer questions which he was ordered and directed by this Court to answer, it is ordered and adjudged that Salvatore Shillitani is hereby remitted to the custody of the Attorney General or his authorized representative for two years imprisonment, or until the further order of this Court. Should the said Mr. Salvatore Shillitani answer before the grand jury the questions which appear on the record and which he was ordered to answer and should Mr. Shillitani answer those questions before the expiration of said sentence, or the discharge of the said grand jury, whichever may first occur, the further order of this Court may be made terminating the sentence of imprisonment.

The defendant will be remanded forthwith.

Mr. Siegel: Your Honor, would you hear a bail application?

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The Court: I will hear it.

Mr. Siegel: At this time the defendant would request bail pending appeal to the Circuit Court. I think there are several issues involved here, the first one being was the defendant in contempt of Judge Wyatt's order.

I think a study of the record will show that he was not in contempt of Judge Wyatt's order; that Judge Wyatt ordered him to be back in court the next day with counsel for the purpose of counsel advising the defendant as to his rights, as to the questions, et cetera.

Mr. Shillitani never appeared before the Court again until August 4th.

On August 2nd the United States Attorney saw fit to adjourn the matter to August 4th.

On August 4th the defendant again was not in contempt of your Honor's order. I think there again the record will show—substantiate that point.

Pending appeal on these points to the Circuit Court, your Honor, I respectfully request that bail be set.

The Court: When you said, "Your Honor's order" you meant Judge Wyatt's order I take it?

Mr. Siegel: Well, it was my interpretation that he was also sentenced on contempt for the—when I—

The Court: He was not so sentenced. I entered no order whatever in this proceeding.

Mr. Siegel: I apologize, your Honor. Then I limit that to Judge Wyatt's order.

The record is clear, from my recollection of reading it, that Judge Wyatt instructed the defendant to be before him the next day at 9:30 with counsel.

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Counsel was there but the case was never called. It was adjourned by the United States Attorney.

And the first time counsel was in court with the defendant was on August 4th before your Honor.

I think there is a substantial question here, and pending appeal to the Circuit Court, I respectfully request that bail be set.

The Court: I will hear the government.

Mr. Lawler: Your Honor, just to clarify the record, both on the appearance on July 2nd, 1964 and August 4th, 1964, the record—the grand jury transcript will reflect Mr. Shillitani was represented by Mr. Siegel on both those occasions.

I might say that, as your Honor has already stated, the main purpose in imposing this sentence is to secure the testimony of the witness, to allow the grand jury to go forward in its investigation.

I think the purpose of that coercive part of the sentence is best served by having the defendant Shillitani immediately remanded to jail so that if this is going to have any effect, the grand jury should benefit from that effect as soon as possible and not have this dragged out for a number of months while the appeal is filed, et cetera.

Mr. Siegel: Apparently, your Honor—may I just interrupt a second—apparently the United States Attorney feels that the ends justify the means, and I don't think our laws, our government, our courts work on that basis.

There is a valid question here which I think should be heard by an appellate court. The point, I feel, is that the defendant should be heard on that particular point, and—

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The Court: What point?

Mr. Siegel: The point I raised before, the question of whether or not he was in contempt of Judge Wyatt's order.

The Court: He was heard on it. I found that he was. And I think that point is utterly frivolous.

Do you have any other point?

Mr. Siegel: Well, if I may refresh your Honor's recollection, Judge Wyatt adjourned the proceeding on July 1st for the purpose of obtaining counsel, and I think the minutes—again I say, if my recollection serves me correctly—the minutes reflect the fact that the Judge ordered the defendant in court the next day—I think it was at 9:30—and he also instructed the grand jury to be in court that particular day, and the United States Attorney never produced the grand jury nor the defendant to appear before Judge Wyatt.

The Court: That is the same point you just made—

Mr. Siegel: It is true.

The Court: —which I said was frivolous.

Do you have any other point, different point?

Mr. Siegel: I—the next point is in regard to the attorney representing the defendant was entitled and the defendant was entitled to representation at the time, as so ordered by Judge Wyatt.

The attorney representing the defendant was not permitted to see or learn of the questions to be asked to the defendant until August 4th.

I, at this particular point, pending further study, I will limit it to those two points, your Honor.

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The Court: I will deny the application for bail. I think your points are frivolous and I think it would defeat the purpose.

The plain intent of Congress in passing this statute was to obtain testimony in return for a grant of immunity from prosecution, and to grant bail while this case drags through the appellate courts, as they always do, would plainly defeat the clear intent of the Congress in enacting this statute.

I, therefore, deny bail and remand the defendant forthwith.

**Government Exhibit 2A, Affidavit of Robert M.
Morgenthau, United States Attorney, Southern
District of New York**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In Re

SALVATORE SHILLITANI

A FFIDAVIT

State of New York,
County of New York,
Southern District of New York—ss:

ROBERT M. MORGENTHAU, being duly sworn deposes and states:

That he is the United States attorney for the Southern District of New York and submits this affidavit in support of an application to have the Court instruct Salvatore Shillitani to testify and produce books, papers or other evidence pursuant to the provisions of Title 18, United States Code, Section 1406.

1. Salvatore Shillitani on February 12, 1964 did appear before a duly constituted Grand Jury for the Southern District of New York, which Grand Jury was then and there inquiring into alleged violations of the Federal Narcotic Laws, in the Southern District of New York and elsewhere. On that date Salvatore Shillitani refused to

*Government Exhibit 2A, Affidavit of Robert M.
Morgenthau, United States Attorney, Southern
District of New York*

answer certain questions on the ground that his answers might tend to incriminate him. A copy of the Grand Jury minutes is attached hereto.

2. On April 22, 1964, Salvatore Shillitani appeared before the same Grand Jury, and again refused to answer certain questions which were put to him concerning violations of Title 21, U.S.C. Sections 173 and 174. Salvatore Shillitani refused to answer these questions on the ground that his answers might tend to incriminate him. A copy of the Grand Jury minutes is attached hereto.

3. On May 6, 1964, Salvatore Shillitani again appeared before the same Grand Jury and again refused to answer questions asked of him concerning violations of Title 21, U.S.C. Sections 173 and 174. Shillitani refused to answer on the ground that his answers might tend to incriminate him. A copy of those Grand Jury minutes is also attached hereto.

4. In my judgment as the United States Attorney for the Southern District of New York, the testimony of Salvatore Shillitani is necessary and material to the investigation now being conducted by the Grand Jury with respect to the alleged narcotic violations. It is further my judgment that the testimony of Salvatore Shillitani concerning the matters under inquiry and his responses to the above questions are necessary to the public interest of the United States.

*Government Exhibit 2A, Affidavit of Robert M.
Morgenthau, United States Attorney, Southern
District of New York*

5. This application is made in good faith and with the approval of Robert F. Kennedy, Attorney General of the United States. A letter from Mr. Kennedy, dated June 1, 1964, expressing such approval, is attached hereto and made a part hereof.

6. Because the questions herein cover facts about persons not presently before the Court and because the nature and content of the proceedings before this Grand Jury should be kept confidential, subject to the objection of any person aggrieved thereby, it is respectfully requested that this application be sealed subject to further order of the Court or any Judge thereof.

WHEREFORE, the deponent respectfully requests the Court to order Salvatore Shillitani to answer the foregoing questions or any others that may be put to him and to testify and produce evidence relating to the matters under inquiry pursuant to the provisions of Title 18, United States Code, Section 1406.

ROBERT M. MORGENTHAU

Robert M. Morgenthau

United States Attorney

Sworn to before me this

30 day of June 1964.

JACK W. BALLIN

Jack W. Ballin

Notary Public, State of New York

No. 41-48400, Queens County

Term Expires March 30, 1964

**Government Exhibit 2B, Letter from Robert F.
Kennedy, United States Attorney General**

[EMBLEM]

OFFICE OF THE ATTORNEY GENERAL
Washington, D. C.

JUNE 1 1964

Mr. Robert M. Morgenthau
United States Attorney
New York, New York

Dear Mr. Morgenthau:

It is my understanding that you are presently conducting an investigation into the alleged involvement of associates of Thomas Luchese in violations relating to narcotics as set forth in Title 18, Section 1406. It is further my understanding that Salvatore Shillitani has information which would be necessary to the successful completion of that investigation; that it is your intention to recall him to testify before a grand jury inquiring into this matter; that Shillitani is expected to refuse to testify on the ground of the privilege against self-incrimination afforded him by the Fifth Amendment to the United States Constitution.

You have advised me that it is your judgment that the testimony of Salvatore Shillitani is necessary to the public interest. With that judgment I am in accord. Should this witness claim said privilege against self-incrimination,

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*Government Exhibit 2B, Letter from Robert F. Kennedy,
United States Attorney General*

therefore, you are authorized to make application to the United States District Court for the Southern District of New York for an order instructing the witness to testify and produce evidence pursuant to the provisions of Title 18, United States Code, Section 1406.

Sincerely,

ROBERT F. KENNEDY
Attorney General

[fol. 71]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 182—September Term, 1964.

Argued November 13, 1964

Docket No. 29117

UNITED STATES OF AMERICA, Appellee,

—v.—

SALVATORE SHILLITANI, Appellant.

Before :

LUMBARD, Chief Judge, SWAN and WATERMAN, Circuit
Judges.

Appeal from judgment of conviction for criminal contempt of court, and from conditional sentence of two years imprisonment, United States District Court for the Southern District of New York, MacMahon, J., sitting without jury. Affirmed.

ANDREW M. LAWLER, JR., Asst. U. S. Attorney (Robert
M. Morgenthau, U. S. Attorney, John E. Sprizzo,
Asst. U. S. Atty.), for Appellee.

ALBERT J. KRIEGER, New York City, for Appellant.

[fol. 72]

OPINION—May 18, 1965

WATERMAN, Circuit Judge:

Defendant appeals from a judgment of conviction for criminal contempt of court, and from a conditional sentence of two years imprisonment, imposed upon him by Judge MacMahon, sitting without a jury, in the United States District Court for the Southern District of New York. We affirm.

In September 1963, a grand jury was impaneled in the Southern District of New York to investigate violations of the federal narcotics laws. The grand jury became particularly interested in the supposed illicit activities of an alleged ring headed by Thomas Luchese. In the belief that defendant was a member of the ring, the grand jury summoned him to give testimony. Defendant appeared before the grand jury on February 12, April 22, and May 6, 1964. On each occasion he refused to answer certain questions on the ground that his replies might tend to incriminate him.

On July 1, 1964, the government applied to Judge Wyatt, pursuant to 18 U. S. C. §1406, for an order granting defendant immunity and directing him to respond to the questions. Judge Wyatt advised defendant, "[F]ull and absolute immunity is being granted to you with respect to all matters on which you are compelled to testify." He then told defendant, "I direct that you appear before this Grand Jury, and that you study these [fifty-three] questions, and that you answer each and every one of these questions." Nonetheless, on July 2 and August 4, 1964, defendant again declined to respond to the questions on the ground that his replies might tend to incriminate him.

Upon notice and an order to show cause, defendant was brought before Judge MacMahon on August 10, 1964, pursuant to Fed. R. Crim. P. 42(b), for a hearing on a charge that he was in criminal contempt of court. At the [fol. 73] conclusion of the hearing Judge MacMahon found defendant guilty and imposed sentence under 18 U. S. C. §401. He ordered defendant imprisoned for two years, with a proviso that the sentence might be prematurely terminated if defendant should obey the order of Judge Wyatt. Defendant appeals both the conviction and the sentence.¹

First. Defendant claims that Judge Wyatt never gave an unequivocal order that he testify before the grand jury, and that he never understood himself to be under such an order. It appears that after Judge Wyatt directed defendant to answer the fifty-three questions, defendant asked for time to consult with counsel. Judge Wyatt granted the request and deferred further proceedings until the following day. The next morning defendant was taken directly before the grand jury, where the questions were propounded to him by the government. Defendant contends that Judge Wyatt meant, instead, for defendant to appear again before *him*, the judge, so that, after defendant had received legal advice, the judge would then issue a binding order. Defendant also contends that this was what he understood the judge to mean.

It is true that there can be no violation of an order to testify unless the court "unequivocally" directs the witness so to do. *Brown v. United States*, 359 U. S. 41, 50 (1959). Furthermore, the defendant must be made aware that the order has been issued. See *Green v. United States*, 356

¹ We delayed our decision in this case, in the hope of receiving guidance from the Supreme Court on several of the issues raised by defendant. See *United States v. Harris*, 334 F. 2d 460 (2 Cir. 1964), *cert. granted*, 379 U. S. 944 (Dec. 14, 1964). It now appears that the Supreme Court will not hear argument on *Harris* during the present term. 33 U. S. L. Week 3335-36 (April 13, 1965).

U. S. 165, 173-79 (1958). Upon an examination of the entire colloquy with Judge Wyatt, however, we are satisfied that the judge meant only to give defendant time to consult with [fol. 74] counsel prior to his next appearance before the grand jury. Moreover, we are satisfied that this was what defendant understood the judge to mean at the time, for defendant never raised his present objection during the grand jury proceedings on July 2 and August 4, 1964, even though on each occasion the government interrogator reminded him of Judge Wyatt's order. Cf. *Piemonte v. United States*, 367 U. S. 556, 560 (1961); *United States v. Rinieri*, 308 F. 2d 24, 26 (2 Cir.), cert. denied, 371 U. S. 935 (1962).

Second. Defendant, who at the time of these events was on parole under a sentence imposed after a prior conviction, claims that the order violated his privilege against self-incrimination, because immunity from prosecution pursuant to 18 U. S. C. §1406 would not protect him from the use of his grand jury testimony in a proceeding to revoke his parole. The immunity granted by 18 U. S. C. §1406, however, is as broad as the privilege against self-incrimination. *Reina v. United States*, 364 U. S. 507, 514 (1960). If the constitutional privilege applies to parole revocation proceedings, a point we need not now decide, the immunity statute would bar use of defendant's testimony therein. See *Ullmann v. United States*, 350 U. S. 422, 430-31 (1956).

Defendant contends that even if he is covered by the immunity statute he would be unable to vindicate his rights thereunder because parolees are not entitled to summon witnesses by subpoena or to confront adverse witnesses in parole revocation hearings. Assuming that defendant has correctly described parole revocation procedures, we are satisfied that he enjoys other guarantees which adequately protect his rights under the immunity statute. Grand jury proceedings cannot be disclosed to a parole board without a court order which the parolee would be entitled to oppose. See Fed. R. Crim. P. 6(e); cf. *Pittsburgh Plate Glass Co.*

v. *United States*, 360 U. S. 395, 399-400 (1959). Further- [fol. 75] more, parole cannot be revoked under 18 U. S. C. §4207 without notice of charges to the parolee and an opportunity to be heard thereon. See *United States ex rel. Frederick v. Kenton*, 308 F. 2d 258 (2 Cir. 1962); *United States ex rel. Buono v. Kenton*, 287 F. 2d 534 (2 Cir.), cert. denied, 368 U. S. 846 (1961). If the charges should relate to matters about which the parolee has testified under a grant of immunity which covers parole revocation hearings, the government would have the burden of showing that its evidence was derived from a source other than the immunized testimony. Cf. *Murphy v. Waterfront Comm'n*, 378 U. S. 52, 79 n. 18 (1964). The possibility that these numerous guarantees will be evaded, through the secret bad faith connivance of the government and the parole board, is too remote to bar application of the immunity statute to a parolee.

Third. Defendant claims that Judge Wyatt's order was improper, because many of the questions he was directed to answer were irrelevant to any possible violation of the federal narcotics laws enumerated in 18 U. S. C. §1406, and were merely designed to elicit gossip or to obtain from him a confession of his own guilt. We are reluctant, however, to circumscribe grand jury proceedings by rigid tests of relevance. See *Blair v. United States*, 250 U. S. 273, 282 (1919); *United States v. Harris*, *supra* at 462-63. Upon an examination of the questions defendant was directed to answer, we are satisfied that all of them were appropriate to a grand jury investigation into possible violations of the federal narcotics laws covered by the immunity statute.

Fourth. Defendant claims that the sentence of two years imprisonment was improper, because he had not been indicted by a grand jury on the charge of criminal contempt. See *Green v. United States*, *supra* at 183. He also claims that the sentence was improper because he had [fol. 76] not been tried by a petit jury. See *United States v. Barnett*, 376 U. S. 681, 694 n. 12, 725-28, 753-60 (1964).

Defendant refers us to the appellant's brief in *United States v. Castaldi*, No. 29043, 2 Cir., Sept. 25, 1964, for an elaboration of the arguments.

Our decision in *Castaldi*, 338 F. 2d 883, 885 (2 Cir. 1964), *petition for cert. filed*, 33 U. S. L. Week 3223 (Dec. 17, 1964), furnishes a complete answer to these contentions. Inasmuch as the contempt proceedings preceded any compliance with Judge Wyatt's order, and because defendant's sentence contained a purge clause, it is the present rule of our circuit that he could be sent to prison for two years without having been tried by a petit jury. Cf. *United States v. Harris*, *supra* at 463-64. For the same reasons, it was unnecessary that he be indicted by a grand jury. See *Green v. United States*, *supra* at 184-85, 187.

Fifth. Defendant claims that the sentence imposed upon him was improper, inasmuch as it contained a purge clause characteristic of a civil contempt, whereas his conviction was for criminal contempt. He contends that this impropriety was compounded by the fact that the purge clause is discretionary, and thus the court may choose not to terminate his imprisonment even if he should comply with Judge Wyatt's order.

It is true that the Supreme Court has suggested that a sentence reflecting "an admixture of civil and criminal contempt" might raise arguable legal issues. *Reina v. United States*, *supra* at 515. We construe the judgment in this case, however, to mean that defendant has an unqualified right to be released from prison once he obeys Judge Wyatt's order. As thus construed, the sentence was entirely proper. *United States v. Castaldi*, *supra* at 885; see *United States v. Rinieri*, *supra* at 25.

Affirmed.

[fol. 77]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Chief Judge, Hon.
Thomas W. Swan, Hon. Sterry R. Waterman, Circuit
Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

SALVATORE SHILLITANI, Defendant-Appellant.

JUDGMENT—May 18, 1965

Appeal from the United States District Court for the
Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. Daniel Fusaro, Clerk.

[fol. 78]

[File endorsement omitted]

[fol. 79] Clerk's certificate to foregoing transcript (omitted in printing).

[fol. 80]

SUPREME COURT OF THE UNITED STATES

No., October Term, 1965

SALVATORE SHILLITANI, Petitioner,

vs.

UNITED STATES.

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—June 29, 1965

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 3rd, 1965.

John M. Harlan, Associate Justice of the Supreme Court of the United States.

[fol. 81]

SUPREME COURT OF THE UNITED STATES

No. 412, October Term, 1965

SALVATORE SHILLITANI, Petitioner,

v.

UNITED STATES.

ORDER ALLOWING CERTIORARI—November 15, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted

limited to Questions 1 and 2 presented by the petition which read as follows:

"1. Was the appellant denied his constitutional right to indictment and trial by jury?

"2. Does the 'admixture of civil and criminal contempt' invalidate the judgment of conviction?"

The case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.